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DOCKET NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1998

MANUEL ANGULO ALVAREZ, ET AL
PETITIONERS

v.

JOSE E. APONTE DE LA TORRE, ET AL
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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110,1

QUESTIONS PRESENTED

1. Whether the Court of Appeals for the First Circuit erred in deciding that the District Court did not abuse its discretion by dismissing the complaint with prejudice for failure to comply with an Order to provide discovery.

2. Whether the Court of Appeals for the First Circuit erred in deciding that the District Court did not violate Due Process and instead acted in conformity with Rule 37 (b)(2) (C) and 41 (b) of the Fed. R. Civ. P., when the District Court went on to issue an Opinion and Judgment dismissing the complaint with prejudice for failure to comply with an Order to provide discovery, **only two (2) days after the respondents' had filed its motion to dismiss**, without affording the plaintiffs-petitioners an opportunity to oppose respondent's motion to dismiss, nor without first exhausting and imposing a milder sanction before resorting to dismissal.

3. Whether the Court of Appeals for the First Circuit erred in

deciding that the District Court did not abuse its discretion by allowing the respondents to file dispositive motions (for summary judgment) way past the Scheduling Order's deadline, without the District Court ordering the respondent to show good and just cause for said late filing, in contravention to Rule 16 (b) and (e) of the Fed. R. Civ. P.

4. Whether the Court of Appeals for the First Circuit erred in deciding that the District Court's decision to dismiss plaintiff's political discrimination claim was correct, because they did not meet the initial burden of producing sufficient evidence from which the trier of fact may reasonably infer that political affiliation was a substantial or motivating factor behind the adverse personnel actions taken by the respondents.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

The list of all parties to the proceeding in the court whose judgment is sought to be reviewed, is as follows:

PETITIONERS: The petitioners are Manuel Angulo Alvarez, Julio Olivero Ayala, Rafael Marcano Mundo, Edwin Gonzalez Curet, Alonso Calderon Burgos, Gabriel Isaac Clemente, Jesus M. O'Farril, Tomas Alvarez Rodriguez, Rogelio Viera Cancel, Luis Encarnacion Nery, Miguel Lozano Guadalupe, Neftali Alvarez Matos, and Tito Fuentes Fuentes.

RESPONDENTS: The respondents are Jose E. Aponte de la Torre, individually and in his official capacity as Mayor of the Municipality of Carolina; and the Municipality of Carolina, located in Puerto Rico.

This Honorable Court should take notice that the Court

of Appeals inadvertently made an error of form in its Opinion, when it indicated that the respondent's counsel that appeared before that court are from the United States Department of Justice, and from the Office of the Solicitor General of the United States. See App., page 1. The correct information is that said counsels are from the office of the Solicitor General of Puerto Rico and from the Department of Justice of Puerto Rico. The United States Government was never a party in this case; and the constitutionality of a federal law or regulation was never at issue in this case.

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IN THE SUPREME COURT OF THE UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

MANUEL ANGULO ALVAREZ, ET AL,
PETITIONERS

V.

JOSE E. APONTE DE LA TORRE, ET AL,
RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

TO THE HONORABLE COURT:

Petitioners, Manuel Angulo Alvarez, Julio Olivero Ayala, Rafael Marcano Mundo, Edwin Gonzalez Curet, Alonso Calderon Burgos, Gabriel Isaac Clemente, Jesus M. O'Farril, Tomas Alvarez Rodriguez, Rogelio Viera Cancel, Luis Encarnacion Nery, Miguel Lozano Guadalupe, Neftali Alvarez Matos, and Tito Fuentes Fuentes, through the undersigned

counsel of record, most respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

I. OPINIONS BELOW

The opinion and judgment below of the Court of Appeals for the First Circuit (App., pages 1-19; 44), and the Opinions and Order and Judgment of the District Court (App., pages 20-27; and pages 29-43), as well as the District Court's Order (App., page 28), are unreported.

II. JURISDICTION

The Honorable Court of Appeals for the First Circuit entered its Judgment on March 19, 1999 (see App., page 44). The jurisdiction of this Honorable Court is invoked under 28 USCA sec. 2101 (c), 28 USCA sec. 1254 (1), and Rules 10, 12, 13, 14 and 33 of the Supreme Court Rules.

III. PROVISIONS OF STATUTES AND RULES INVOLVED IN THIS CASE

A. FEDERAL STATUTES

1. Civil Rights Act codified at 42 USCA sec. 1983 (see App., pages 45-46).

B. FEDERAL RULES OF CIVIL PROCEDURE

1. Rules 16(b) and (e) of the Fed. R. Civ. P. (App., pages 46-48); 2. Rule 12(b)(6) of the Fed. R. Civ. P. (App., pages 48-49); 3. Rule 37 (b)(2)(C)of the Fed. R. Civ. P. (App., pages 49-50); 4. Rule 41 (b) of the Fed. R. Civ. P. (App., pages 50-51); 5. Local Rule 311.5, of the District Court. See App., page 51.

IV. STATEMENT OF THE CASE

On September 8, 1995, plaintiffs-petitioners brought an action in the United States District Court for the District of Puerto Rico for political discrimination pursuant to the Civil Rights Act codified at 42 USCA sec. 1983 (see App., pages 45-46), under the First and Fourteenth Amendments to the United States Constitution, as well as under Rutan v. Republican Party of Illinois, 497 US 62 (1990).

The petitioners are former **tenured** low-level public

employees who worked at the Department of Maintenance and Transportation ("the Department") of the Municipality of Carolina, Puerto Rico ("the Municipality").[1]

Petitioners sued respondent Mayor Jose E. Aponte de la Torre ("Mayor Aponte") in both his official and individual capacities; and also sued the Municipality.[2] The petitioners are all members of the New Progressive Party ("NPP"), while respondent Mayor Aponte is an active member of the Popular Democratic Party ("PDP"). See the First Circuit's Opinion, at the Appendix, page 2.

In 1995, the Municipal Assembly of the Municipality approved a plan to privatize the Department. The privatization plan called for the layoff of all employees in the Department,

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[1]One (1) petitioner worked as a warehouse keeper; another as a vehicle tire repairman and gasoline dispatcher; and the remaining petitioners worked as vehicle mechanics.

[2]See Monell v. Department of Social Services of City of New York, 436 US 658 (1978), in which this Court held that municipalities are persons within the meaning of 42 USCA sec. 1983.

including the thirteen (13) plantiffs-petitioners in this case.

Petitioners alleged in the complaint that the decision to privatize the Department, as well as the Municipality's failure to relocate them within the Municipality, and its failure to later recall them when job positions became available, were politically motivated in violation of their rights under the First and Fourteenth Amendments to the United States Constitution, and under Rutan,[3] supra.

After some procedural incidents within the District Court not relevant here, the parties filed a joint motion dated November 12, 1996, submitting a revised discovery Schedule which also included **a new and final deadline, up to May 2, 1997,** for the filing of dispositive motions within the District

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[3]"To the victor belong only those spoils that may be constitutionally obtained." See Rutan, supra, at page 64. Rutan, supra, pages 65 and 79, held that promotions, transfers, recall and hiring decisions involving low-level public employees, for which party affiliation is not an appropriate requirement, **may not** be constitutionally based on political party affiliation and support.

Court. See App., page 60. The Honorable District Court issued an Order dated November 15, 1996, approving the revised discovery Schedule **and the new and final deadline for the filing of dispositive motions.** See App., pages 60-61; 5.

On May 5, 1997, the respondent Municipality of Carolina filed a motion for summary judgment, three (3) days past the deadline set forth in the Scheduling Order. See App., page 61. The respondent Municipality of Carolina, did not file a motion nor in any way showed good and just cause for said late filing of its dispositive motion, in contravention of Rules 16(b) and (e) of the Fed. R. Civ. P..

On June 10, 1997, respondent Mayor Aponte, in his personal capacity, filed a motion to join and/or adopt the Municipality's statement of uncontroverted material facts. See App., pages 61-62. Petitioners then filed a motion requesting an extension of time to file their opposition to summary judgment (see App., page 62), which was granted by the District

Court. See App., page 62.

On June 30, 1997, petitioners filed their opposition to summary judgment (see App., page 62); and on that same day they also filed a motion captioned "Motion Requesting Defendant's Dispositive Motion for Summary Judgment [to] be Expunged from the Record". See App., page 62. The District Court denied petitioner's motion requesting that respondent's dispositive motion for summary judgment, be expunged from the record. See App., page 63.

Regarding respondent's motion for summary judgment, the District Court issued an Order captioned "Order in the Matter of Defendants' Motions for Summary Judgment", dated December 19, 1997 (see App., pages 29-41; 67), and on that same day, it issued a Partial Judgment. See App., pages 42-43.

In its Order granting partial judgment,[4] the District

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[4]This Order and the Partial Judgment was not a final decision and therefore was not immediately appealable, because the District Court did not make the certification required under Rule 54 (b) of the Fed. R. Civ. P. See App.,

Court first determined the uncontroverted facts in the case (see App., pages 30-33), and then proceeded to dismiss petitioners' claims, except the claims of discrimination for failure to relocate and recall against the Municipality and Mayor Aponte in his official capacity. See App., pages 33-41.

Thereafter, a Pretrial/Settlement Conference was held on January 20, 1998 (see App., pages 40; 68; and page 21), to consider the two (2) claims left in the case. In the pretrial conference held on January 20, 1998, the District Court granted respondent's request to depose on February 2, 1998, a non-party witness, **although the discovery deadline set on the Scheduling Order had expired**. See First Circuit's Opinion, App., page 10. See also App., page 25. In said Pretrial Conference, the District Court denied petitioner's request to depose Mayor Aponte.

The petitioners then filed a motion for reconsideration

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page 41, and page 43.

from the Order made by the District Court in said Pretrial Conference, in which it denied petitioner's request to depose Mayor Aponte. See App., pages 68-69. In said motion for reconsideration, the petitioners presented an alternative to the District Court, so as to allow them to instead submit short written interrogatories to the respondent Mayor Aponte. In its Order granting respondent's motion to dismiss, dated February 4, 1998 (See App., at pages 20-26), the District Court denied petitioner's motion for reconsideration from the Order of denial to depose or to serve short written interrogatories to respondent Mayor Aponte, stating the following: "This petition is untimely. Contrary to codefendant's discovery requests disposed at the conference, plaintiffs had made **no** petition to conduct this discovery prior to January 20, 1998. Furthermore, the court finds that this was a belated attempt by plaintiffs to search for information which was crucial to meet their burden at trial and

which they evidently lacked."[5] See App., page 25.

In addition, in the pretrial conference held on January 20, 1998, the respondents went on to indicate to the District Court Judge that the plaintiffs should produce evidence through written responses to four (4) questions suggested by the respondents themselves. Then the District Court demanded from **each** plaintiff, as suggested by the respondents, the following offers of proof to be submitted to the District Court through written responses under oath/verification: 1. Each position you claim was available at the Municipality at the time of your lay-off or subsequently became available but was not offered to you; 2. Specify the qualifications required for the position(s) listed in response to question no. 1 above. Indicate if you met those qualifications and if not, specify why not; 3. For each position identified in response to question no. 1 above,

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[5]The First Circuit, in its Opinion dated March 19, 1999, at footnote 6, to dispose of this issue merely reiterated these same contentions made by the District Court. See App., page 10.

state the name of the person appointed to fill the position and his/her political affiliation; 4. List the evidence you have available to establish that political affiliation was a motive for filling the positions.[6] See the First Circuit's Opinion, footnote 7, at App., page 12.

In response to said four (4) interrogatories propounded to the petitioners by the District Court, only the petitioner Manuel Angulo Alvarez filed his answers to the same. The respondents then filed a motion to dismiss dated February 2, 1998, for failure to comply with the District Court's Order to provide discovery. See App., page 69. This motion was entered on the docket on February 4, 1998. See App., pages

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[6]In the pretrial conference held on January 20, 1998, the District Court warned the plaintiffs-petitioners, that failure to comply with the response to such interrogatories, will result in the dismissal of the claims and/or sanctions against counsel personally. **It also instructed the petitioners to submit and file said responses no later than January 29, 1998. In other words, the thirteen (13) plaintiffs were given only 8 days to answer and file their written responses.** Trial was set for 2/17/98.

69. Then immediately thereafter, the District Court, **in a two(2) day period**, issued an Order dated February 4, 1998 (see App., pages 20-26), and a Judgment on that same day[7] (see App., page 27), dismissing the complaint and the remaining claims because the petitioners' failure to comply with the District Court's Order to provide discovery.

On February 12, 1998, within the ten (10) days required under Rule 59 (e) of the Fed. R. Civ. P., the petitioners filed a motion captioned: "Motion for Reconsideration and/or Motion for Relief from Judgment under Rule 59 and 60 of FRCP, and Motion for Continuance if Relief from Judgment is Granted". With this motion, it was accompanied a sworn statement of plaintiff-petitioner Tito Fuentes Fuentes; and it was also attached to said motion a statement under penalty of perjury **signed by all of the plaintiffs-petitioners**, in which they

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[7]This Order as well as the Judgment, both dated February 4, 1998, were entered on the docket on February 6, 1998. See Civil Docket case, at App., page 69.

answered the four (4) interrogatories propounded and ordered by the District Court at the pretrial conference held on January 20, 1998. See App., pages 70; 19.

The District Court, through an order dated March 24, 1998, denied petitioner's motion for reconsideration and/or for relief from judgment. See App., page 28.

An appeal to the Honorable Court of Appeals for the First Circuit ensued. The jurisdiction of the Court of Appeals for the First Circuit was invoked pursuant to 28 USCA sec. 1291.

On March 19, 1999, the Court of Appeals for the First Circuit issued its Opinion affirming the District Court's judgment dismissing the complaint. See App., pages 1-19.

Petitioners' statements of issues on the notice of appeal and their brief, was two fold: we appealed the entry of summary judgment made by the District Court through its Order and Partial Judgment dated December 19, 1997, concerning the privatization of the Department for political reasons; and we

also appealed the dismissal and final judgment made by the District Court on the remaining claims, based on plaintiffs' failure to comply with the District Court's order to provide discovery.

Regarding the claim of the privatization of the Department for political reasons, the Court of Appeals decided that "the plaintiffs failed to meet their burden of presenting a prima facie case of discrimination..." See App., page 11. With respect to the District Court's dismissal of the remaining claims due to plaintiff's failure to comply with an order to provide discovery, the Court of Appeals held, quoting Link v. Wabash R.R. Co., 370 US 626 (1962), that the District Court did not abuse its discretion by imposing the sanction of dismissal with prejudice on the remaining claims, because it warned the plaintiffs that failure to comply with its order that **each** plaintiff answer the interrogatories could result in the dismissal of their claims. See App., pages 17-19.

V. CONCISE ARGUMENTS AND REASONS FOR THE ALLOWANCE OF THE WRIT

A. THE COURT OF APPEALS DECIDED AN IMPORTANT QUESTION INVOLVING THE FEDERAL RULES OF CIVIL PROCEDURE, WHICH IS CONTRARY TO SUPREME COURT AUTHORITY

The Court of Appeals relied on Link v. Wabash R.R. Co., 370 US 626 (1962), (see App., page 17), to uphold the District Court's discretion in dismissing the complaint. But Link, supra, at pages 627, 628-629, and footnote 11 at pages 634-635, dealt with an Order by the District Court for failure of the plaintiff's counsel to appear at the pretrial conference and therefore for failure to prosecute the action. In Link, supra, at note 11, pages 634-635, this Honorable Court determined that the plaintiff waited more than 19 months to answer the defendant's interrogatories, and that against this background, it was "hardly surprising that the District Court concluded that the failure to appear for a pretrial conference **was merely another delaying tactic**." (Emphasis added)

The case law on point to the first question here posted, are National Hockey League v. Metropolitan Hockey Club, Inc., 427 US 639 (1976), Insurance Corp. v. Compagnie Des. Bauxites, 456 US 694 (1982), Roadway Express, Inc. v. Piper, 447 US 752 (1980), and Societe Internationale v. Rogers, 357 US 197, 212 (1958).[8]

This Honorable Court held in National Hockey League, supra, the following: "Under the circumstances of this case, we hold that the District Judge did not abuse his discretion in finding bath faith on the part of these respondents, and concluding that the extreme sanction of dismissal was appropriate in this case by reason of respondents' "flagrant bad

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[8]In National Hockey League, supra, page 640, this Court reaffirmed, quoting from Societe Internationale, supra, page 212, the following: "This Court held in Societe Internationale v. Rogers, 357 US 197, 212 (1958), that Rule 37 "should not be construed to authorize dismissal of a complaint because of petitioner's noncompliance with a pretrial production order when it has been established that failure to comply **has been due to inability**, and not to willfulness, bad faith, or any fault of petitioner."..." (Emphasis added)

faith" and their counsel's "callous disregard" of their responsibilities". (Emphasis added) See National Hockey League, supra, page 643.[9]

It was in Insurance Corp. v. Compagnie Des Bauxites, 456 US 694, 707-708 (1982), where this Honorable Court explained the scope of National Hockey League, supra, concerning the extreme sanction of dismissing the complaint for failure to comply with a district court's order to provide discovery under Rule 37 (b)(2) of the Fed. R. Civ. P. In Insurance Corp. v Compagnie Des Bauxites, supra, pages 707-708, this Court explained and held as follows: "Even if Rule 37 (b)(2) may be applied to support a finding of personal jurisdiction, **the question remains** as to whether it was properly applied under the circumstances of this case. **Because the**

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[9]In the case at hand, however, neither the District Court or the Court of Appeals for the First Circuit made any indication or determination whatsoever regarding any bad faith or callous disregard on the part of the plaintiffs - petitioners, nor on the part of their counsel.

District Court's decision to invoke the sanction was accompanied by a detailed explanation of the reasons for that order, and because that decision was upheld as a proper exercise of the District Court's discretion by the Court of Appeals, this issue need not detain us for long... Rule 37(b)(2) contains two standards-one general and one specific-that limit a district court's discretion. **First, any sanction must be "just"**; second, the sanction must be specifically related to the particular "claim" which was at issue in the order to provide discovery. While the latter requirement reflects the rule of Hammond Packing, supra, the former represents **the general due process restrictions** on the court's discretion. In holding that the sanction in this case was "just", we rely specifically on the following. First, the initial discovery request was made in July 1977. Despite **repeated** orders from the court to provide the requested material, on December 21, 1978, the District Court was able to state that the petitioners "**haven't even made**

any effort to get this information up to this point." ...The court then warned petitioners of a possible sanction. **Confronted with continued delay and an obvious disregard of its orders, the trial court's invoking of its powers under Rule 37 was clearly appropriate.** Second, petitioners **repeatedly** agreed to comply with the discovery orders within specified time periods. In each instance, petitioners failed to comply with their agreements. Third, respondent's allegation that the court had personal jurisdiction over petitioners was not a frivolous claim, and its attempt to use discovery to substantiate this claim was not, therefore, itself a misuse of judicial process. ...Fourth, petitioners had ample warning that a continued failure to comply with discovery orders would lead to the imposition of this sanction. ...Petitioners failed to comply with the discovery order; they also failed to make any attempt to meet this burden of proof. This course of behavior, coupled with the ample warnings, demonstrates the "justice" of the trial court's order."

(Emphasis added)

As a matter of fact and law, the Court of Appeal's decision in this case is not only contrary to the rulings and rationale of this Court in Insurance Corp. v. Compagnie Des Bauxites, supra, but also the Court of Appeals relied on Link, supra, a case not only clearly inapplicable to this case, but also one which **does not contain the actual interpretation and rulings** regarding a district court's extreme sanction of dismissal for failure to comply with an order to provide discovery under Rule 37 (b)(2) of the Fed. R. Civ. P.

To be sure, the District Court abused its discretion in dismissing the complaint under the circumstances of this case. Its sanction was not "just"[10] and therefore contravenes this

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[10]Where, as here, the District Court's order to provide discovery was issued on the pretrial conference held on January 20, 1998, and although the petitioners did not initially fully comply because only one petitioner signed and submitted a sworn statement answering the four (4) interrogatories, instead of all of the petitioners, on February 12, 1998, less than one (1) month from the issuance of the discovery order, the petitioners filed a motion for reconsideration attaching

Court's rulings and reasoning established in Insurance Corp. v. Compagnie Des Bauxites, supra, page 707.

This Honorable Court should take notice of the fact that in its Order dismissing the complaint, the District Court did not ground its dismissal due to continued disobeyance or uncompliance with its order or for want of prosecution. See App., pages 20, 23-24. The only reason adduced for the dismissal of the complaint in its entirety, was that only one (1) of the petitioners, the leader of the group, signed and submitted the answers to the four (4) interrogatories. In addition, petitioner Angulo's answers to the interrogatories contained the information requested, which complied with Rule 33 of the Fed. R. Civ. P. The Court of Appeals and the District Court made no findings as to whether the petitioners or their counsel had incurred in repeated uncompliance with the District Court's

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thereto a sworn statement signed by all of the petitioners, in which they answered the four (4) interrogatories propounded by the District Court.

orders, or that they were warned on several ocassions regarding their conduct with respect to the District Court orders to provide discovery.[11] Accordingly, under the circumstances of this case, the Court of Appeals erred in holding that the District Court did not abuse its discretion by dismissing the complaint.

In addition, at oral argument in the Court of Appeals, the petitioners argued that the District Court only granted 8 days to the thirteen (13) petitioners to produce the responses to the four (4) interrogatories, **which constituted an inability** to do so in an extreme short period of time. See Societe Internationale, supra, at page 212, in which this Honorable Court held that counsel's failure to comply due to his inability, does not

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[11]In its Opinion at footnote 12 (see App., page 18), the Court of Appeals mentioned only one isolated and unrelated instance in which the District Court, in June 1997, admonished the plaintiffs for the failure to comply with the District Court's order, in which it requested the plaintiffs to supplement their answer to interrogatories propounded by the defendants. But the Court of Appeals acknowledged that the plaintiffs did comply with that order, and that therefore the case continued its normal process and without the imposition of sanctions.

constitute grounds for dismissing the cause of action or the complaint. See also National Hockey League, supra, page 640.

B. THE COURT OF APPEAL'S DECISION HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, OR HAS SANCTIONED SUCH DEPARTURE BY A LOWER COURT, AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER

Question two (2) of this Certiorari, poses an interelated matter to the above discussion. The District Court dismissed the complaint acting on a motion to dismiss filed by the respondents. The District Court's Order and Judgment dismissing the complaint for failure to comply with its order to provide discovery, were both issued only two (2) days after the motion to dismiss was filed.

This action by the district court contravened Local Rule 311.5 of the Local Rules for the District Court of Puerto Rico, which allows 10 days to a party to oppose a motion to dismiss. See App., page 51. Thus, the District Court abused its discretion by issuing an Order and Judgment during the 10 day

period reserved by Local Rule 311.5 to oppose a motion to dismiss. See in other related context, Meade v. Grubbs, 841 F. 2d 1512, 1519-1521 (10th Cir. 1988).

The third question poses a different scenario. Rule 16 (b) of the Fed. R. Civ. P., states that "[a] schedule shall not be modified **except upon a showing of good cause** and leave of the district judge..." The respondents filed their motion for summary judgment on May 5, 1997, although the final deadline to file dispositive motions was set in the Scheduling Order until May 2, 1997. The District Court allowed the motion for summary judgment, although the respondents did not show good cause in order to modify the deadline set in the Scheduling Order, in contravention to Rule 16 (b) and (e) of the Fed. R. Civ. P. Therefore, the Court of Appeals erred in deciding that the District Court did not abuse its discretion by allowing respondent's motion for summary judgment.

C. THE COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL

LAW THAT SHOULD BE SETTLED BY THIS COURT

The fourth question presents an important issue of federal law.

In its Order and Partial Judgment (see App., pages 29-41; 42-43), the District Court entertained and decided petitioner's claim that the decision to privatize the Department, and respondents failure to transfer plaintiffs to appropriate job positions within the Municipality, were motivated for political reasons. See App., pages 29-41. The Court of Appeals also addressed these issues. See App., pages 7-11.

In political discrimination cases involving nonpolicymaking employees, for which party affiliation is not an appropriate job requirement (see Rutan, supra), the plaintiff bears the initial threshold burden of producing sufficient evidence from which a rational jury could find that political affiliation was a substantial or motivating factor behind the adverse employment action. Once plaintiffs clear the threshold,

the burden shifts to defendants to articulate a nondiscriminatory ground for the dismissals, or for other adverse employment decisions (see Rutan, supra), and prove by a preponderance of the evidence that plaintiffs would have suffered the adverse employment decision regardless of their political affiliation and beliefs. This is known as the Mt. Healthy defense. See Mt. Healthy City School District Board of Education v. Doyle, 429 US 274, 287 (1977).

Plaintiffs-petitioners proffered sufficient circumstantial evidence in this case to establish a prima facie case of political discrimination. Plaintiff Manuel Angulo Alvarez attested in his sworn statement that because the majority of the employees that worked at the Department were NPP members and followers, the opposing political party of respondent Mayor Aponte, coupled with the fact that it was well known that Mayor Aponte was molested with the NPP majority at the Department, a highly charged political atmosphere had been created and was present at the Department. See Carmen M. Rodríguez-Rios v. Miguel

A. Cordero, 138 F. 3d 22, 24 (1st. Cir. 1998) ("Although a highly charged political atmosphere alone cannot support an inference of discriminatory animus, "[a] highly charged political atmosphere...coupled with the fact that plaintiffs and defendants are of competing political persuasions, **may be probative of discriminatory animus**" ...Thus,...just as noted in Acevedo-Diaz, here "[a] jury reasonably could have concluded **that [plaintiff]...[was a] conspicuous target for political discrimination**"...") (Emphasis added)

Based on that ruling and reasoning by the First Circuit in 1998, we believe the petitioners presented a prima facie case of political discrimination. As the Court of Appeals for the First Circuit acknowledged in its Opinion, all of the petitioners were members of the NPP, the opposing political party of respondent Mayor Aponte, a fact well known to the respondents. See App., page 1. Therefore, the highly charged political atmosphere at the Department attested by the petitioner Manuel Angulo

Alvarez, who worked there for almost 25 years, coupled with the fact that the petitioners and respondents were of competing political persuasions, these circumstances surely "**may be probative of discriminatory animus**." See Carmen M. Rodriguez-Rios, supra, page 24.

In addition to the above stated proffer of circumstancial evidence, petitioner Manuel Angulo Alvarez also attested in his sworn statement that the PDP employees that worked at the Department, who belonged to the Mayor's political party, were being relocated **with preference treatment** to similar job positions in other Departments within the Municipality, while the petitioners, who were members of the NPP, were being relocated to under-level job positions, like cutting grass and trees in public roads and streets.

Viewing the whole proffer of circumstancial evidence in the light most favorable to the nonmoving party (petitioners), as it should be under a motion for summary judgment (see

Anderson v. Liberty Lobby Inc., 477 US 242, 255 (1986)), we believe that petitioners established a prima facie case of political discrimination. Because the Court of Appeals affirmed the District Court's decision to the contrary, it erred.

VI. CONCLUSION

This petition for a writ of certiorari should be granted.

In San Juan, Puerto Rico, this 27th day of May, 1999.

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DOCKET NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NO. 98-1587

MANUEL ANGULO ALVAREZ, ET AL,
PLAINTIFFS, APPELLANTS,

V.

JOSE E. APONTE DE LA TORRE, ET AL,
DEFENDANTS, APPELLEES

APPEAL FROM THE UNITED STATES
DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

[Hon. Raymond L. Acosta, Senior U.S. District Judge]

Before
Torruella, Chief Judge,
Hall,* Senior Circuit Judge,
and Lipez, Circuit Judge

Jesús M. Hernández Sánchez for appellants.
Luis E. Pabón-Roca for appellee Municipality of Carolina and José E. Aponte in his Official Capacity as Mayor, Leticia Casalduc-Rabell, Assistant Solicitor General, U.S. Department of Justice for appellee José E. Aponte, Mayor of Carolina, in his individual capacity, with whom Carlos Lugo-Fiol, Solicitor General, U.S. Department of Justice and Edda Serrano-Blasini, Deputy Solicitor General, U.S. Department of Justice, were on brief.

March 19, 1999

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*Of the Ninth Circuit, sitting by designation.

LIPEZ, Circuit Judge. Manuel Angulo-Alvarez and twelve of his former coworkers at the Department of Maintenance and Transportation of the Municipality of Carolina, Puerto Rico ("the Department"), appeal from a district court judgment dismissing their political discrimination claims against the Municipality of Carolina and its Mayor, José E. Aponte ("Mayor Aponte"). We affirm.

I. Background

The plaintiffs are former career employees of the Municipality of Carolina who worked in the Department. They are also members of the New Progressive Party ("NPP"). Mayor Aponte, currently serving his third term in office, is a member of the Popular Democratic Party ("PDP"). In 1995, the Municipal Assembly of the Municipality of Carolina approved a plan to privatize the Department. The privatization plan called for the layoff of all employees in the Department, including the thirteen plaintiffs in this case.

Following the decision to privatize, the Municipality sent

each employee a notification letter informing them that the decision to layoff personnel would be made pursuant to the "Layoff Plan."[1] The employees were later informed that the Municipality would attempt to relocate as many employees as possible by helping them obtain work with the private contractor taking over the Department or by placing them within other departments of the Municipality.

As part of this process, the plaintiffs were offered unskilled laborer positions with other departments in the Municipality of Carolina. These positions, however, constituted a demotion from their prior jobs. Seven of the thirteen plaintiffs met with municipal officials but declined their offers for employment. Six of the plaintiffs failed to meet with officials at

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[1]In 1993, pursuant to his powers under the Autonomous Municipalities Act of the Commonwealth of Puerto Rico, Mayor Aponte adopted a "Layoff Plan" which would serve to regulate any layoffs of personnel as a result of lack of funds, work shortages, reorganization, the implementation of technological advances or the privatization of governmental services. The plan applied to all career service employees, temporary employees and non-regular employees.

all to discuss employment options. Municipal officers also called the plaintiffs to their offices so that plaintiffs could fill out job applications with the private company taking over the Department. Only three of the plaintiffs filled out the applications with the contractor.

The plaintiffs sued Mayor Aponte, in both his official and individual capacities, and the Municipality of Carolina pursuant to 42 USC § 1983. The plaintiffs alleged that the decision to privatize the Department, the Municipality's failure to relocate the plaintiffs within the Municipality, and its failure to later recall the plaintiffs when positions became available, were politically motivated in violation of their rights under the First and Fourteenth Amendments to the United States Constitution.

Defendants moved for a summary judgment on the plaintiffs' claims that the decision to privatize the Department and the failure to relocate the plaintiffs were acts of political discrimination. The district court granted summary judgment on

the privatization claim on the ground that the plaintiffs failed to offer any evidence from which a factfinder could infer that political affiliation was a substantial or motivating factor in the elimination of the Department.[2] On the relocation claim,[3] however, the district court denied summary judgment.[4]

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[2]The plaintiffs argue that the district court was barred from considering defendants' summary judgment motion under Fed. R. Civ. P. 16 (b) and 16 (e) because the motion was filed three days after the court-imposed scheduling deadline for all dispositive motions. The three day delay in filing the motion did not cause the plaintiffs any prejudice. A trial date had not been set at the time that defendants' motion was submitted. Following the motion's late filing, the plaintiffs requested and were granted an extension of time to oppose the motion, finally filing their opposition eight weeks later. It was only then that the plaintiffs objected to the late filing of defendants' summary judgment motion. Although it is true that defendants did not request an extension of time in which abuse its discretion in concluding that the plaintiffs waived their objection to the late filing.

[3]The court did not address the plaintiffs' claim that the failure to recall the plaintiffs was an act of political discrimination. According to the court, this issue was not raised by the parties in their motions for summary judgment. The parties do not dispute this conclusion.

[4]Mayor Aponte also moved for a summary judgment on the claims against him in his individual capacity. This motion was granted and all claims against Mayor Aponte in

Following the entry of a partial summary judgment, the district court ordered the claims of failure to relocate and failure to recall plaintiffs to proceed and scheduled a pre-trial settlement conference. At the conference, the court found that the plaintiffs, on the eve of trial, had not yet offered the evidence necessary to proceed in a political discrimination case. As a result, the district court ordered each plaintiff to file answers, under oath, to four interrogatories issued by the court itself. Only one of the thirteen plaintiffs, Angulo-Alvarez, filed answers to the court-ordered interrogatories within the prescribed time. Defendants filed a motion to dismiss the plaintiffs' complaint for failure to comply with the court's order. The district court granted the motion with respect to the twelve plaintiffs who failed to respond in toto. It also granted a dismissal of Angulo-Alvarez's claim on the ground that his answers were inadequate.

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his individual capacity were dismissed. In their brief, defendants offer a seven page discussion in support of the court's conclusion. Given that the plaintiffs did not appeal the dismissal of the claim against Mayor Aponte, the defendants' arguments were unnecessary.

The plaintiffs appeal the entry of summary judgment on their privatization claim and the subsequent dismissal of their remaining claims of failure to relocate and failure to recall.

II. Summary Judgment

We review the summary judgment entry de novo, taking the facts in a light most favorable to the nonmoving party. See Rivera-Cotto v. Rivera, 38 F. 3d 611, 613 (1st. Cir. 1994). We will affirm the entry of judgment if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56. Even where motive or intent is at issue, "summary judgment may be appropriate if the nonmoving party rests merely upon conclusory allegations, improbable inferences, and unsupported speculation." Rivera-Cotto, 38 F. 3d at 613 (quoting Medina-Muñoz v. R.J. Reynolds Tobacco Co., 896 F 2d 5, 8 (1st. Cir. 1990)).

When political discrimination is alleged in a case involving the dismissal of a non-policymaking employee, the plaintiff must first produce sufficient evidence, either direct or circumstantial, from which a "rational jury could find that political affiliation was a substantial or motivating factor behind the adverse employment action." Rodríguez-Ríos v. Cordero, 138 F. 3d 22, 24 (1st. Cir. 1998). Once the plaintiff meets the threshold burden, the burden then shifts to the defendant-employer who must "articulate a nondiscriminatory basis for the adverse employment action and prove by a preponderance of the evidence that it would have been taken without regard to plaintiff's political affiliation." Id.; see also Larou v. Ridlon, 98 F. 3d 659, 661 (1st. Cir. 1996); Acevedo-Díaz v. Aponte, 1 F. 3d 62, 66 (1st. Cir. 1993).

Here, the plaintiffs claimed that privatization of the Department was an act of political discrimination. The district court concluded that the plaintiffs had failed to present any evidence "from which [one] might infer that political affiliation

was the substantial or motivating factor in the elimination of the [Department]." We agree. The plaintiffs' complaint stated that the plaintiffs were NPP followers and that Mayor Aponte had "developed a policy, custom or practice of political discrimination against members of the New Progressive Party." The only evidence submitted in support of those allegations was the affidavit of plaintiff Angulo-Alvarez.[5] In the affidavit, Angulo-Alvarez stated that Mayor Aponte is a member of the PDP and that the plaintiffs are known, active members of the NPP. He claimed that of the seventy employees in the Department, most of them were NPP supporters and that this "bothered" the management of the municipality of Carolina. Neither Angulo-Alvarez's affidavit nor any other evidence in the record supports the statements that 1) the majority of

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[5]The plaintiffs never propounded interrogatories or requests for admissions and they never deposed any of the parties involved in this appeal. They never filed requests for production; the only documentation in the record came from defendants' request for production in which they sought the plaintiffs' personnel files.

Department employees were NPP followers or 2) that, even if true, the Municipality was troubled by a strong NPP presence in the Department. Angulo-Alvarez's statements were speculative assertions with no basis in the record.[6]

Indeed, although the plaintiffs alleged that a majority of the employees at the Department were NPP followers, defendants correctly note that the plaintiffs' own statements belie the accuracy of this statement. The plaintiffs claim -- and defendants do not dispute-- that there were a total of seventy

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[6]Although the plaintiffs did move to depose Mayor Aponte at the pre-trial conference, the court denied the request. The plaintiffs complain that the court denied their request while it granted a similar request by defendants to depose a critical non-party witness. The plaintiffs, however, fail to note that the requests were not made simultaneously. In denying the request, the court explained in the minutes of the pre-trial conference that "[t]his is the first time that the plaintiffs have made this request." When the plaintiffs moved for reconsideration of the court's ruling, the court denied the motion, again noting that, "[c]ontrary to codefendant's discovery requests disposed [of] at the conference, plaintiffs had made **no** petition to conduct this discovery prior to **January 20, 1998**." Although the record does not reveal the specific date of defendants' discovery request, the court was clear that it had been raised prior to the conference, unlike the plaintiffs' request.

employees in the Department. In the plaintiffs' motion for reconsideration of the dismissal of their complaint, they listed 29 PDP followers who were relocated to other jobs. Combined with the other six names set forth in additional documentation, at least half of the employees in the Department must have been PDP followers. At the very most, the plaintiffs can claim that the Department was evenly split between PDP and NPP followers. On this evidence, no rational jury could conclude that the decision to privatize the department was politically motivated. Given that the plaintiffs failed to meet their initial burden of presenting a prima facie case of discrimination, the court properly entered summary judgment on the privatization claim.

III. Motion to Dismiss

As the court explained in its final order dismissing the plaintiffs' complaint, the court concluded at the pretrial settlement conference that the plaintiffs could not "proffer... elementary evidence crucial to a political discrimination case

despite the fact that they carry that burden at trial." Concerned with the plaintiffs' ability to meet their burden at trial, the court ordered each plaintiff to answer four interrogatories.[7] In the minutes of the conference, the court explained:

> "[T]he only issue remaining in this action is the MUNICIPALITY's liability for having failed to relocate/recall plaintiffs. Accordingly, plaintiffs would have to establish at trial that they were laid off and not relocated/recalled even though: (1) there were employment positions available within the MUNICIPALITY (2) for which they qualified and (3)

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[7]The court demanded the following offers of proof: 1) Each position you claim was available at the MUNICIPALITY at the time of your lay-off or subsequently became available but was not offered to you. 2) Specify the qualifications required for the position(s) listed in response to question no. 1. Indicate if you met those qualifications and if not, specify why not. 3) For each position identified in response to question no. 1 state the name of the person appointed to fill the position and his/her political affiliation. 4) List the evidence you have available to establish that political affiliation was a motive for filling the position.

these positions were filled by PDP followers instead. Plaintiffs were not able to identify a single position which they claim was filled by a PDP for which they qualified.

Given the narrow issues which remain outstanding, the imminence of trial date, plaintiffs' burden at trial and in order to avoid the time and expense involved in trial and its preparation, <u>each</u> plaintiff shall provide under oath/verification...answers to [four] questions.

The plaintiffs were warned that "failure to comply shall result in the dismissal of the claim(s) and/or sanctions against counsel personally." In response to the order, the plaintiffs submitted one affidavit, signed by Angulo-Alvarez. Defendants then filed a motion to dismiss for failure to comply with the court's order. The court granted the motion to dismiss on the basis that the plaintiffs' answers to the interrogatories were incomplete-twelve of the thirteen plaintiffs failed to even submit answers and Angulo-Alvarez's answers were incomplete. The

court found that Angulo-Alvarez failed to proffer the required information, noting that "there is no justification for plaintiffs to lack this information at this late stage of the proceedings."

Federal Rules of Civil Procedure 37(b)(2)(C)[8] and 41(b)[9] give the court the authority to dismiss a complaint for failure to comply with a court order. Rule 37(b)(2)(C) specifically provides for dismissal if a party fails to comply with an order to

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[8]Fed. R. Civ. P. 37(b)(2)(C) provides in relevant part:
(b) Failure to Comply With Order.
(2) Sanctions by Court in Which Action is Pending.
If a party or an officer, director, or managing agent of a party...fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26 (f), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:
(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof...

[9]Fed. R. Civ. P. 41(b) provides in relevant part: **(b) Involuntary Dismissal: Effect Thereof.** For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant.

provide discovery while Rule 41 (b) is a more general grant of authority, allowing dismissal for the failure to comply with any order of the court. Although the court did not specify which rule of procedure it relied upon in dismissing the complaint,[10] we review such a decision on either of the above stated grounds for an abuse of discretion. See Guex v. America Financial Life Ins. and Annuity Co., 146 F. 3d 40, 41 (1st. Cir. 1998) (reviewing dismissal pursuant to Fed. R. Civ. P. 37 (b)(2)(C) for abuse of discretion); HMG Property Investors, Inc. vs. Parque Industrial Rio Canas, Inc., 847 F. 2d 908, 916-917 (1st. Cir. 1998) (reviewing choice of remedy under Fed. R. Civ. P. 41(b) for abuse of discretion).

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[10]It is clear, however, that, contrary to the plaintiffs' contentions, the court did not base its decision to dismiss the complaint on Fed. R. Civ. P. 12(b)(6). Rule 12(b)(6) allows a party to petition the court to dismiss a complaint on the basis that the moving party has failed to state a claim upon which relief may be granted. While the court was concerned with the plaintiffs' ability to meet their burden at trial, as evidenced in the minutes of the pre-trial conference, the ground for the dismissal was the plaintiffs' failure to comply with the court's order.

At the pretrial settlement conference, the court ordered the plaintiffs to answer four questions due to the apparent dearth of evidence. The plaintiffs were warned by the court at this conference that failure to comply with the court's order could lead to a dismissal of their complaint in tis entirety. Nonetheless, twelve of the thirteen plaintiffs made no effort to comply with the order. Angulo-Alvarez, the only plaintiff to submit answers, did so selectively. He set forth those 16 jobs that were available at the time the plaintiffs were laid off. He failed, however, to provide the qualifications necessary to fill each of the positions. Instead, he selectively described the necessary qualifications for certain positions, and then stated that the plaintiffs were qualified to fill those positions. In response to the court's request that he state the name of each person who filled the 16 vacant positions described in response to question one as well as their political affiliation, Angulo-Alvarez only offered the names of eight PDP followers. Finally, Angulo-Alvarez failed entirely to respond to the request for

evidence he intended to use to establish that political affiliation was a motive for filling the positions. The plaintiffs' contention that Angulo-Alvarez's answers "complied with the District Courts' [sic] questions propounded to plaintiffs" is without merit.[11]

We are similarly unpersuaded by the plaintiffs' protestations that the complaint was improperly dismissed because they were not given an opportunity to oppose defendants' motion. We have stated in this circuit that "[l]ack of a hearing does not offend due process where the plaintiff had ample warning of the consequences of his failure to comply with court orders." Spiller v. U.S. V. Lab., Inc., 842 F. 2d 535, 538 (1st. Cir. 1988) (citing Link v. Wabash R.R. Co., 370 U.S. 626 (1962)). Nor is it an abuse of discretion to employ the sanction

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[11]The plaintiffs do not offer any explanation for the failure of each plaintiff to submit answers to the court's interrogatories. Their brief, however, could be read to suggest that they believed the submission of Angulo-Alvarez's affidavit satisfied the court's demands. To the extent this is in fact their position, we reject it. The court was clear that each plaintiff was to submit answers to its interrogatories.

of dismissal without first considering less severe sanctions. "[T]he law is well established in this circuit that where a noncompliant litigant has manifested a disregard for orders of the court and been suitably forewarned of the consequences of continued intransigence, a trial judge need not first exhaust milder sanctions before resorting to dismissal." Figuero Ruiz v. Alegria, 896 F. 2d 645, 649 (1st. Cir. 1990) (internal quotation marks and citation omitted). The court clearly warned the plaintiffs that failure to comply with its order that each plaintiff answer the interrogatories could result in a dismissal of their claims.[12] The plaintiffs' disregard of this order and the court's

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[12]This was not the first warning issued by the court. In June 1997, in response to defendants' motion to compel the plaintiffs to supplement their answers to interrogatories, the court reprimanded counsel for their inexcusable failure to comply with the discovery request:

> It is important to note that this particular discovery was served over one year ago and the responses are totally inadequate. The court further finds that the information sought by codefendant should be readily available to plaintiffs not only because they have the burden of proof in this action but most important, because the evidentiary foundations for the discrimination claims should have been available to

specific warning that dismissal could follow from such noncompliance provided a sufficient basis for the dismissal. We find no abuse of discretion in the district court's action.[13]

Judgment affirmed.

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counsel prior to instituting this action. See Rule 11 Fed. R. Civ. P. (Counsel personally subject to sanctions for violations to rule).
Plaintiffs are hereby admonished that failure to comply with the terms of this Order shall result in the imposition of sanctions including but not limited to the dismissal of the complaint.

The plaintiffs did comply with this court order, submitting supplementary answers to the original interrogatories, and the case continued without the imposition of any sanctions.

[13]Following the dismissal, the plaintiffs filed a motion for reconsideration. To support their motion to set aside the dismissal, they attached a sworn statement, signed by each of the plaintiffs, which they asserted was responsive to the court's interrogatories. However, the only difference between the sworn statement submitted with the motion for reconsideration and Angulo-Alvarez's sworn statement was that it was signed by each of the thirteen plaintiffs. The substance of the statements were nearly identical; the statement signed by all thirteen plaintiffs was a virtually word for word rendition of Angulo-Alvarez's affidavit that had been filed initially in response to the court's order. Given that interrogatories (2) and (4) propounded by the court unmistakably required individualized responses from the plaintiffs, the court did not err in denying the motion to reconsider.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MANUEL ANGULO ALVAREZ, ET AL *CIVIL NO.95-2121(RLA)

PLAINTIFFS *

v. *

JOSE E. APONTE DE LA TORRE, ET AL *

DEFENDANTS *

****

ORDER GRANTING MOTION TO DISMISS AND IN THE MATTER OF PETITIONS FOR CERTIFICATION AND RECONSIDERATION

The following matters pending in this action are hereby disposed of as follows.

MOTION TO DISMISS

Codefendant MUNICIPALITY OF CAROLINA ("MUNICIPALITY") has moved the court to dismiss the complaint based on plaintiffs' failure to fully answer specific questions addressed to their political discrimination claims.

Procedural Background

This action was filed by 13 former employees of the

Department of Maintenance and Transportation of the MUNICIPALITY who were terminated as a result of the privatization of that department. The complaint alleged political discrimination in the elimination of the Department, failure to relocate them to another position within the MUNICIPALITY and failure to recall. Named defendants were the MUNICIPALITY and its mayor both in his individual and official capacities.

All claims based on the elimination of the Department were dismissed as well as the claims asserted against the mayor in his individual capacity. See Order in the Matter of Defendants' Motions for Summary Judgment filed on...(docket no. ...).

Thereafter, a Pretrial/Settlement Conference was held to discuss the logistics of the trial against the MUNICIPALITY and the mayor in his official capacity on the remaining claim i.e, failure to relocate and/or recall plaintiffs. See Minutes of Pretrial/Settlement Conference held on January 20, 1998

(docket no. 92). Outstanding discovery issues were raised by counsel for the MUNICIPALITY at that time. It became evident during the course of the conference that plaintiffs had not furnished codefendant during discovery nor could they proffer at the time elementary evidence crucial to a political discrimination case despite the fact that they carry that burden at trial. In view of this situation, the imminence of trial, and in order to avoid a waste of time and expenses, each plaintiff was ordered to provide answers to the following questions under oath/verification no later than January 29, 1998:

1. Each position you claim was available at the MUNICIPALITY at the time of your lay-off or subsequently became available but was not offered to you.

2. Specify the qualifications required for the position(s) listed in the response to question no. 1. Indicate if you met those qualifications and if not, specify why not.

3. For each position identified in response to question no. 1 state the name of the person appointed to fill the position

and his/her political affiliation.

4. List the evidence you have available to establish that political affiliation was a motive for filling the position. Minutes of Pretrial/Settlement Conference at pp. 2-3.

Responses to Interrogatories

The MUNICIPALITY has petitioned dismissal of the complaint arguing that plaintiffs' answers to the aforementioned interrogatories are incomplete. We agree.

Contrary to our specific instructions, only one plaintiff, MANUEL ANGULO ALVAREZ, submitted a response. Further, there is absolutely no reference in MR. ANGULO's affidavit to political discrimination and/or who was appointed to fill those alleged vacancies nor any proffer of the evidence to be presented at trial to establish discrimination.

This case was filed in 1995 and trial was set for **February 17, 1998** since July 1997.[1] There is no justification

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[1] See order Granting Extension of Time and Rescheduling Pretrial/Settlement Conference and Jury Trial, filed on July 24, 1997 (docket no. 69).

for plaintiffs to lack this information at this late stage of the proceedings. Further, there is no reason why we should proceed to trial if plaintiffs lack the necessary proof to meet their burden of producing sufficient evidence from which the trier of fact may reasonably infer that political affiliation was a substantial or motivating factor behind the adverse personnel action. Larou v. Ridlon, 98 F.3d 659, 661 (1st. Cir. 1996); Ortiz-Piñero v. Rivera-Arroyo, 84 F.3d 7, 12 (1st. Cir. 1996); Rivera-Cotto v. Rivera, 38 F.3d 611, 614 (1st. Cir. 1994); Jirau-Bernal v. Agrait, 37 F.3d 1, 3 (1st. Cir. 1994).

Conclusion

Based on the foregoing, the Motion Requesting Dismissal for Failure to Comply with Order, filed by the MUNICIPALITY on February 2, 1998 (docket no...) is **GRANTED.** Accordingly, the complaint filed in this case is hereby **DISMISSED.** Judgment shall be entered accordingly.

TRIAL set for **February 17, 1998** is hereby CONTINUED.

RECONSIDERATION

Plaintiffs' Motion for Reconsideration from Order of Denial to Depose Defendant José E. Aponte; Request for Leave to Serve Written Interrogatories to Defendant José E. Aponte and/or for Continuance, filed on January 26, 1998 (docket no. 93) is **DENIED.**

This petition is untimely. Contrary to codefendant's discovery requests disposed at the conference, plaintiffs had made **no** petition to conduct this discovery prior to **January 20, 1998.**

Furthermore, the court finds that this was a belated attempt by plaintiffs to search for information which was crucial to meet their burden at trial and which they evidently lacked.

CERTIFICATION

The court finds no justification for certifying as final the Partial Judgment Dismissing Various Claims... issued on December 19, 1997. See Nichols v. Cadle Co., 101 F.3d 1448 (1st. Cir. 1996). However, in view of the dismissal of the case

in its entirety, plaintiffs' Motion Requesting Certification of Partial Judgment...filed on January 26, 1998 (docket no. 94) is **DENIED AS MOOT.**

This Order shall be notified by **FAX** to: (1) JESUS HERNANDEZ SANCHEZ, ESQ. at **725-1112,** (2) LUIS E. PABON ROCA, ESQ. at **723-2040** and (3) JO ANN ESTADES-BOYER, ESQ. at **723-9188** as well as by mail.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 4th day of February, 1998.

(SIGNED)
RAYMOND L. ACOSTA
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MANUEL ANGULO ALVAREZ, ET AL
PLAINTIFFS

v.

JOSE E. APONTE DE LA TORRE, ET AL
DEFENDANTS

*CIVIL NO.95-2121(RLA)

* ENTERED ON DOCKET 2/6/98 PURSUANT TO * FRCP RULES 58 and 79 a

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FINAL JUDGMENT

The court having dismissed the complaint filed in this case through its Order issued on this date, it is hereby

ORDERED AND ADJUDGED that the complaint filed in this case be and the same is hereby **DIMISSED.**

IT IS SO ORDERED.

San Juan, Puerto Rico, this 4th day of February, 1998.

(SIGNED)
RAYMOND L. ACOSTA
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MANUEL ANGULO ALVAREZ, ET AL *CIVIL NO.95-2121(RLA)
PLAINTIFFS *

v. *

JOSE E. APONTE DE LA TORRE, ET AL *
DEFENDANTS *
****

ORDER

MOTION	**RULING**
Date filed: 2/12/98 **Docket** #99 [x] **Plffs.**	**DENIED.** See Opposition filed on March 2, 1998 (docket no. 100)
Title: MOTION FOR RECONSIDERATION AND/OR MOTION FOR RELIEF FROM JUDGMENT....	

March 24, 1998
Date

(SIGNED)
RAYMOND L. ACOSTA
U. S. District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MANUEL ANGULO ALVAREZ, *CIVIL NO.95-2121(RLA)
ET AL
PLAINTIFFS *

v. *

JOSE E. APONTE, ET AL *
DEFENDANTS
****

ORDER IN THE MATTER OF DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

Plaintiffs in this action are 13 former employees of the Department of Maintenance and Transportation of the MUNICIPALITY OF CAROLINA who were terminated as a result of the privatization of that department. The complaint asserts political discrimination in the elimination of the Department, failure to relocate them within the MUNICIPALITY and failure to recall. Named defendants are the MUNICIPALITY OF CAROLINA and its mayor, Jose E. Aponte, both in his individual and official capacities.

Counsel for the MUNICIPALITY[1] has moved the court to enter summary judgment dismissing the complaint. The mayor, in his personal capacity joined in the request. Plaintiffs have opposed the summary judgment and objected to the mayor's joinder as untimely. However, given the overlapping facts in both requests and to expedite the proceedings the court will entertain codefendant's motion as well. Therefore, plaintiffs' objection is overruled.

THE FACTS

For summary judgment purposes, the following facts are not in dispute.

1. Codefendant JOSE E. APONTE is the mayor of the MUNICIPALITY OF CAROLINA.

2. Codefendant JOSE E. APONTE is a member of the Popular Democratic Party (PDP).

3. Plaintiffs are members of the New Progressive Party (PNP).

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[1]Also representing the mayor in his official capacity.

4. Except for one plaintiff who worked as a warehouse keeper and another as a tire repairman/gasoline dispatcher, plaintiffs were employed in different capacities as mechanics in the Maintenance and Transportation Department of the MUNICIPALITY OF CAROLINA ("the DEPARTMENT").

5. The DEPARTMENT provided maintenance services to the municipal vehicles.

6. On **February 24, 1993**, JOSE E. APONTE approved the Lay-Off Plan which applied to all career, transitory and irregular employees.

7. In 1995, the MUNICIPALITY decided to contract a private company to provide the services offered by the DEPARTMENT.

8. The decision to privatize the services was taken because the MUNICIPALITY was facing serious problems with the services provided by the DEPARTMENT.

9. After privatization, the servicing of the MUNICIPAL fleet improved at a lower cost to the MUNICIPALITY.

10. Pursuant to the Lay-off Plan, letters were sent to plaintiffs dated **February 23, 1995**, advising them of the accrued number of years in service.

11. Pursuant to the Lay-off Plan, letters were sent to plaintiffs dated **March 20, 1995**, advising them that they would be laid-off effective April 30, 1995.

12. Letters were sent to plaintiffs dated **April 18, 1995**, notifying them of the postponement of their lay-offs from April 30, 1995, to May 31, 1995.

13. On **May 18 and 19, 1995**, letters were sent to plaintiffs notifying them of available job positions in the area of "conservación y ornato" which plaintiffs declined.

14. On **June 1, 1995**, a preference register according to class specifications was prepared for the employees subject to lay-off, including plaintiffs.

15. On **July 11, 1995**, plaintiffs were given the opportunity to apply for positions with the private entity selected to take over the operations. Only three (3) filled out

the applications and one failed to appear. Most declined because they preferred to continue to be employed by the MUNICIPALITY.

POLICITAL DISCRIMINATION

In a political discrimination action, plaintiff bears the initial burden of producing sufficient evidence from which the trier of fact may reasonably infer that political affiliation was a substantial or motivating factor behind the adverse personnel action. Larou v. Ridlon, 98 F. 3d 659, 661 (1st. Cir. 1996); Ortiz-Piñero v. Rivera-Arroyo, 84 F. 3d 7, 12 (1st. Cir. 1996); Rivera-Cotto v. Rivera, 38 F. 3d 611, 614 (1st. Cir. 1994); Jirau-Bernal v. Agrait, 37 F. 3d 1, 3 (1st. Cir. 1994).

The burden then shifts to the defendant to articulate legitimate nondiscriminatory reason(s) for the challenged acts and to prove by a preponderance of the evidence that the adverse action would have been taken without regard to political affiliation. Larou, 98 F. 3d at 661; Ortiz, 84 F. 3d at 12.

Unlike Title VII discrimination suits, where plaintiff retains the burden of proof, in political discrimination cases once plaintiff meets the threshold burden of persuasion the burden of proof shifts to the defendant. Jirau-Bernal, 37 F. 3d at 3.

To avoid summary judgment, the evidence presented by plaintiff must establish that political affiliation was a substantial or motivating factor behind the challenged action. Rivera-Cotto, 38 F. 3d at 614. Unsubstantiated allegations without evidence of discrimination will not preclude summary judgment. Rivera-Cotto, 38 F. 3d at 614 (unsupported and speculative assertions of political discrimination insufficient to defeat summary judgment).

On the other hand, summary judgment will be granted if defendant's evidence compels a finding that political affiliation did not motivate the adverse action taken.

THE MUNICIPALITY AND THE MAYOR IN HIS OFFICIAL CAPACITY

The complaint identifies three separate acts of

discrimination. First, the elimination of the DEPARTMENT for political reasons, the failure to transfer plaintiffs to appropriate positions within the MUNICIPALITY and the failure to recall plaintiffs to positions which became available after their termination. Our ruling on the motions submitted by the MUNICIPALITY will be limited to the first two allegations since these were the only ones addressed by the parties in the summary judgment context.

Elimination of the Department

In support of their claim of discrimination plaintiffs submitted only the affidavit of coplaintiff MIGUEL ANGULO ALVAREZ who alleges that the reason for eliminating the DEPARTMENT was because the majority of its employees were PNP followers. Without any further evidence to support this conclusion, this statement is totally speculative. Compare Berdecía-Perez v. Zayas-Green, 111 F. 3d 183 (1st. Cir. 1997) (issue of fact regarding intent for reorganization precluded summary judgment).

On the other hand, MUNICIPAL officials directly involved in the decision to contract out the vehicle maintenance services[2] and who had personal knowledge of the relevant facts have given valid nondiscriminatory reasons for the privatization. The MUNICIPALITY has presented ample evidence, which plaintiffs have failed to refute, of both the efficiency and savings which resulted therefrom which justifies its decision to eliminate the DEPARTMENT.

Based on the foregoing, we find that plaintiffs have not presented any evidence from which we might infer that political affiliation was the substantial or motivating factor in the elimination of the DEPARTMENT. Accordingly, all claims asserted against the MUNICIPALITY and Jose E. Aponte in his official capacity grounded on the validity of the determination to

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[2]The MUNICIPALITY submitted the affidavits of LUIS RAUL DIAZ CUEVAS, Personnel Director and ANGEL R. MARTINEZ FIGUEROA, Director of Public Works and Conservation Department Area who had under his supervision the DEPARTMENT which was eventually privatized.

privatize the DEPARTMENT are hereby **DISMISSED.**

Relocation

The evidence in the record establishes that plaintiffs were offered positions only as field maintenance workers regardless of their preparation or experience.

Plaintiffs, through the affidavit of MR. ANGULO, claim that the PDP supporters were given preference in relocation to positions within the MUNICIPALITY that did not entail field work. MR. ANGULO further states that none of the plaintiffs were offered transfers to jobs similar to those offered PDP members. MR. ANGULO also provided the names of 16 such relocated employees who were PDP members.

The only evidence submitted by defendants to controvert this allegation of discrimination is that no other positions were available for employees with plaintiffs' qualifications. They contend that there were positions in the DEPARTMENT which had no "equivalent or similar positions" in other departments and therefore, it was "very difficult to relocate and transfer all

of the laid-off employees." Aff. of LUIS RAUL DIAZ CUEVAS par. 14. However, no particularized information as to the other individuals transferred and their credentials was submitted.

Accordingly, summary judgment on plaintiffs' claims of discrimination against the MUNICIPALITY and JOSE E. APONTE in his official capacity due to defendants' failure to relocate are hereby **DENIED.**

JOSE E. APONTE IN HIS PERSONAL CAPACITY

As previously discussed, the uncontroverted evidence in the record establishes the financial need for the elimination of the DEPARTMENT as well as problems with the quality of the services provided. Apart from a generalized allegation of political motivation, plaintiffs have failed to present any evidence of political *animus* bringing about this administrative decision. Thus, any allegation based on the elimination of the DEPARTMENT as to JOSE E. APONTE in his individual capacity is also **DISMISSED.**

Additionally, as argued by JOSE E. APONTE in his motion, plaintiffs have not pointed to any evidence from which the mayor's personal involvement in the decisions regarding their transfer to other positions within the MUNICIPALITY or the alleged failure to recall could be inferred. The record is devoid of any proof indicating what role, if any, the mayor had in these allegedly discriminatory acts.

Plaintiffs having failed to present any evidence of the mayor's direct participation in plaintiff's relocation within the MUNICIPALITY and/or recall which justifies relief in his personal capacity, see Díaz v. Martínez, 112 F. 3d 1, 2 (1st. Cir. 1997) (supervisors only liable for constitutional violations "on the basis of [their] own acts or omissions") the claims against JOSE E. APONTE in his individual capacity are hereby **DISMISSED.**

CONCLUSION

The Motion for Summary Judgment[3] filed by the MUNICIPALITY on August 27, 1997 (docket No. 75) is **GRANTED IN PART and DENIED IN PART.**

Accordingly, the discrimination claims asserted against the MUNICIPALITY and JOSE E. APONTE in his official capacity based on the elimination of the DEPARTMENT are hereby **DISMISSED.**

It is further ORDERED that the Motion to Join and/or Adopt Defendants [sic] Uncontested Material Facts filed on August 27, 1997 (docket No. 78) filed by JOSE E. APONTE in his individual capacity is hereby **GRANTED.**

Accordingly, the claims asserted against JOSE E. APONTE in his individual capacity are hereby **DISMISSED.**

Judgment shall be entered accordingly.

The parties are reminded a PRETRIAL/SETTLEMENT

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[3]See Notice (docket No. 74). See also Opposition (docket No. 76); Reply (docket No. 77); Sur Reply (docket No. 81) and Motion Tendering Official Translation (docket No. 88).

CONFERENCE[4] has been set for **January 20, 1998 at 10:00 am.**

TRIAL against the MUNICIPALITY and the mayor in his official capacity on the failure to relocate and/or recall claims shall be held on February 17, 1998.[5]

IT IS SO ORDERED.

San Juan, Puerto Rico, this 19th day of December, 1997.

(SIGNED)
RAYMOND L. ACOSTA
United States District Judge

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[4]The parties shall contact the chambers of the undersigned to verify where the Conference will be held.

[5]See Order Granting Extension of Time and Rescheduling Pretrial/Settlement Conference and Jury Trial, filed on July 24, 1997 (docket No. 69).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MANUEL ANGULO ALVAREZ, *CIVIL NO.95-2121(RLA)
ET AL
PLAINTIFFS *ENTERED ON DOCKET
DEC. 29, 1997
v. *PURSUANT TO FRCP
RULES 58 & 79A
JOSE E. APONTE, ET AL *
DEFENDANTS
****

PARTIAL JUDGMENT DISMISSING VARIOUS CLAIMS ASSERTED AGAINST THE MUNICIPALITY AND JOSE E. APONTE IN HIS OFFICIAL CAPACITY AND DISMISSING THE COMPLAINT AGAINST JOSE E. APONTE IN HIS INDIVIDUAL CAPACITY

The court having ruled on defendants' dispositive motions through its Order issued on this date, it is hereby

ORDERED AND ADJUDGED that the discrimination claims asserted against the MUNICIPALITY and JOSE E. APONTE in his official capacity based on the elimination of the DEPARTMENT be and the same are hereby **DISMISSED.**

It is further ORDERED AND ADJUDGED that the claims asserted against JOSE E. APONTE in his individual

capacity be and the same are hereby **DISMISSED.**

IT IS SO ORDERED.

San Juan, Puerto Rico, this 19th day of December, 1997

(SIGNED)
RAYMOND L. ACOSTA
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NO. 98-1587

MANUEL ANGULO ALVAREZ, ET AL,
PLAINTIFFS, APPELLANTS,

V.

JOSE E. APONTE DE LA TORRE, ET AL,
DEFENDANTS, APPELLEES

JUDGMENT

Entered: March 19, 1999

This cause came on to be heard on appeal from the United States District Court for the District of Puerto Rico, and was argued by counsel.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By The Court

PHOEBE MORSE
Clerk

[cc: Messrs. Hernández Sánchez, Pabón Roca & Ms. Casalduc Rabell]

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PROVISIONS OF STATUTES AND RULES INVOLVED IN THIS CASE

1. Federal statutes:

42 USCA sec. 1983 (1998 Cumulative Annual Pocket Part), states as follows:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or

other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purpose of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

2. Federal Rules of Civil Procedure:

A. Rule 16 (b) and (e) of the Fed. R. Civ. P. (1998 Cumulative Annual Pocket Part) states as follows:

"(b) Scheduling and Planning. Except in categories of actions exempted by district court rule as inappropriate, **the district judge**, or a magistrate judge when authorized by district court rule, **shall**, after receiving the report from

the parties under Rule 26 (f) or after consulting with the attorneys for the parties and any unrepresented parties by a scheduling conference, telephone, mail, or other suitable means, **enter a scheduling order that limits the time**

(1) to join other parties and to amend the pleadings;

(2) to file motions; and

(3) to complete discovery.

The scheduling order may also include

(4) modifications of the times for disclosures under Rules 26 (a) and 26 (e)(1) and of the extent of discovery to be permitted;

(5) the date or dates for conferences before trial; a final pretrial conference, and trial; and

(6) any other matters appropriate in the circumstances of the case.

The order shall issue as soon as practicable but in any event within 90 days after the appearance of a defendant and within 120 days after the complaint has been served on a defendant. **A schedule shall not be modified except upon a showing of good cause and by leave of the district judge or, when authorized by local rule, by a magistrate judge...**

(e) Pretrial Orders. After any conference held pursuant to this rule, an order shall be entered reciting the action taken. **This order shall control the subsequent course of the action unless modified by a subsequent order.** The order following a final pretrial conference shall be modified only to prevent manifest injustice."

B. Rule 12 (b) (6) of the Fed. R. Civ. P. (1998 Cumulative Annual Pocket Part) states as follows:

"(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or

third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:...(6) failure to state a claim upon which relief can be granted..."

C. Rule 37 (b)(2)(C) of the Fed. R. Civ. P. (1998 Cumulative Annual Pocket Part) states as follows:

"(b) Failure to Comply with Order.

(1) ...

(2) Sanctions by Court in Which Actions is Pending. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30 (b)(6) or 31(a) to testify on behalf of a party **fails to obey an order to provide or permit discovery,** including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an

order entered under Rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:...(C) An order stiking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, **or dismissing the action or proceeding or any part thereof,** or rendering a judgment by default against the disobedient party; (D)..."

D. Rule 41 (b) of the Fed. R. Civ. P., states as follows:

"(b) Involuntary Dismissal: Effect thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other

than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits."

3. Local Rule 311.5 of the District Court:

It states in pertinent part as follows:

"All motions filed before the Court shall be made in compliance with the following: ...(5) Response and Brief. If the respondent opposes a motion, he or she **shall** file a response **within ten (10) days** after service of the motion, including brief and such supporting documents as are then available..."

Proceedings include all events. File Appeal Closed
3:95cv2121 Angulo-Alvarez, et al v. Aponte, et al

U.S. DISTRICT COURT
PUERTO RICO (SAN JUAN)

CIVIL DOCKET FOR CASE #: 95-CV-2121

Angulo-Alvarez, et al v. Aponte, et al Filed: 09/08/95
Assigned to: Judge Raymond L. Acosta Jury demand: Both
Demand: $3,000,000 Nature of Suit: 442
Lead Docket: None Jurisdiction: Federal Question
Dkt # in other court: None

Cause: 42:1983 Civil Rights Act

9/8/95	1	COMPLAINT Filing Fee $120.00 Receipt #77978 (su) [Entry date 09/14/95]
9/8/95	--	SUMMONS issued for Jose E. Aponte, Mun. of Carolina (su) [Entry date 09/14/95]
9/18/95	--	CASE sent to open file. (su)
9/18/95	--	DUPLICATE CASE REFERRED TO JUDGE. (su)
10/6/95	2	AMENDED COMPLAINT by Manuel Angulo-Alvarez, Julio Olivero-Ayala, Rafael Marcano-Mundo, Edwin Gonzalez-Curet, Alonso Calderon Burgos, Gabriel Isaac Clemente, Jesus M. O'Farril, Tomas Alvarez-Rodriguez, Rogelio Viera-Cancel, Luis Encarnacion-Nery, Edwin Delgado-Olivieri, Miguel Lozano-Guadalupe, Neftali Alvarez-Matos (Answer due 10/16/95

for Mun. of Carolina, for Jose E. Aponte) amending [1-1] complaint (su)

10/20/95 3 MOTION by Jose E. Aponte to Extend Time until 12/4/95 to answer complaint (su) [Entry date 10/24/95]

10/31/95 4 ORDER granting [3-1] motion to Extend Time until 12/4/95 to answer complaint, reset Answer deadline to 12/4/95 for Jose E. Aponte, and set Notice of Attorney Appearance Deadline on 12/4/95 for Jose E. Aponte. Parties are admonished, however, that this ext is limited to deft in his personal capacity, i.e., not Mun. of Carolina and mayor in his official capacity. (signed by Judge Raymond L. Acosta) (su) [Entry date 11/01/95]

11/13/95 5 MOTION by Mun. of Carolina to Extend Time 15 days to answer complaint (il) [Entry date 11/17/95]

12/5/95 6 MOTION by Jose E. Aponte to Extend Time until 1/4/96 to answer the complaint (ni) [Entry date 12/06/95]

12/7/95 7 ORDER mooting [5-1] motion to Extend Time 15 days to answer complaint (signed by Judge Raymond L. Acosta) (ni)

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Proceedings include all events. File Appeal Closed

3:95cv2121 Angulo-Alvarez, et al v. Aponte, et al [Entry date 12/12/95]

12/7/95	8	MOTION by All Plaintiffs for Leave to File second amended complaint w/second amended complaint tendered (ni) [Entry date 12/12/95]
12/8/95	9	ORDER granting [6-1] motion to Extend Time until 1/4/96 to answer the complaint, reset Answer deadline to 1/4/96 for Jose E. Aponte (signed by Judge Gilberto Gierbolini for RLA) (ni) [Entry date 12/12/95]
12/29/95	10	NOTICE of Attorney Appearance for Mun. of Carolina by Francisca Santiago-Negron (su) [Entry date 01/03/96]
12/29/95	10	MOTION by Mun. of Carolina to Extend Time until 2/4/96 to answer second amended complaint (su) [Entry date 01/03/96]
1/4/96	--	ENDORSED ORDER granting [10-1] motion to Extend Time until 2/4/96 to answer second amended complaint, reset Answer deadline to 1/4/96 for Mun. of Carolina (signed by Judge Raymond L. Acosta) (ni) [Entry date 01/10/96]
1/4/96	11	MOTION by Jose E. Aponte to Extend Time until 2/4/96 to answer the complaint (ni) [Entry date 01/10/96]
1/5/96	12	ANSWER by Jose E. Aponte, Mun. of Carolina (Attorney Francisca Santiago-Negron) to second amended complaint; jury demand (ni) [Entry date 01/10/96]
1/26/96	13	ORDER granting [8-1] motion for Leave to File second amended complaint (signed by Judge

Raymond L. Acosta) (ni) [Entry date 01/30/96]

1/26/96 14 SECOND AMENDED COMPLAINT by plaintiffs (Answer due 2/5/96 for Mun. of Carolina, for Jose E. Aponte) amending [2-1] amended complaint by plaintiffs adding Tito Fuentes-Fuentes (ni) [Entry date 01/30/96]

2/5/96 15 INSTANTER by Jose E. Aponte req. to Extend Time until 2/8/96 to answer the complaint (ni) [Entry date 02/06/96]

2/8/96 16 ANSWER by Jose E. Aponte (Attorney Anita Hill) to second amended complaint (ni) [Entry date 02/12/96] [Edit date 02/12/96].

2/14/96 17 ORDER mooting [15-1] motion req. to Extend Time until 2/8/96 to answer the complaint (signed by Judge Raymond L. Acosta) (ni) [Entry date 02/15/96]

3/8/96 18 ORDER, joint ISC memorandum due 4/15/96 for All Plaintiffs, for Mun. of Carolina, for Jose E. Aponte (signed by Judge Raymond L. Acosta) (ni) [Entry date 03/12/96]

Proceedings include all events. File Appeal Closed
3:95cv2121 Angulo-Alvarez, et al v. Aponte, et al

3/21/96 19 MOTION by Jose E. Aponte, Mun. of Carolina for Francisca Santiago Negron to Withdraw as Attorney (ni) [Entry date 03/26/96]

3/21/96 20 MOTION by Mun. of Carolina for Norma Cotti Cruz to Withdraw as Attorney (ni) [Entry date 03/26/96]

3/21/96 21 NOTICE of Attorney Appearance for Mun. of Carolina by Lou A. Delgado (ni) [Entry date 03/26/96]

3/28/96 22 ORDER & LIST OF COUNSEL AS OF MARCH 27, 1996. granting [19-1] motion for Francisca Santiago Negron to Withdraw as Attorney (Terminated attorney Francisca Santiago-Negron for Mun. of Carolina, attorney Francisca Santiago-Negron for Jose E. Aponte granting [20-1] motion for Norma Cotti Cruz to Withdraw as Attorney (Termintated attorney Norma Cotti-Cruz for Mun. of Carolina granting [21-1] appear/appearance notice. Atty Delgado shall advise whether or not she will rep. Jose E. Aponte in his official capacity. set Motion Filing deadline to 4/15/96 etc. as stated herein. (signed by Judge Raymond L. Acosta) (ni) [Entry date 04/01/96]

4/10/96 23 Informative Motion in compliance with order by Jose E. Aponte, Mun. of Carolina re: that atty Lou Ann Delgado represents the Mun. of Carolina and Jose E. Aponte in his official capacity (ni) [Entry date 04/12/96]

4/12/96 24 MOTION by Jose E. Aponte, Mun. of Carolina to Extend Time until 4/23/96 to file an ISC (ni) [Entry date 04/15/96]

4/18/96 25 ORDER [23-1] motion information Noted. granting [24-1] motion to Extend Time until

4/23/96 to file an ISC, memorandum due 4/23/96 for All Plaintiffs, for Mun. of Carolina, for Jose E. Aponte (signed by Judge Raymond L. Acosta) (ni) [Entry date 04/24/96]

4/24/96 26 ORDER granting telephone req. joint ISC memorandum due 4/25/96 for All Plaintiffs, for Mun. of Carolina, for Jose E. Aponte (signed by Judge Raymond L. Acosta) (ni) [Entry date 04/25/96]

4/26/96 27 JOINT ISC Memorandum filed by All Plaintiffs, Jose E. Aponte, Mun. of Carolina (ni) [Entry date 04/30/96]

5/23/96 28 ORDER, setting written Discovery deadline to 6/28/96 Pltfs shall identify expert witnesses by 6/28/96 and provide report by 7/31/96. Depo of pltf's expert witnesses to be taken by 8/30/96 and defts by 10/31/96. Defts shall identify expert witnesses by 8/30/96 and provide report by 9/30/96, etc. as stated herein. (signed by Judge Raymond L. Acosta) (ni) [Entry date 05/30/96]

7/3/96 29 MOTION by All Plaintiffs to Extend Time until 7/18/96 to submit written discovery upon deft due to physical accident of atty (ni) [Entry date 07/09/96]

7/11/96 30 MOTION by Jose E. Aponte, Mun. of Carolina for Anita Hill of the DOJ to Withdraw as Attorney (ni) [Entry date 07/15/96]

7/16/96 31 ORDER granting [29-1] motion to Extend Time until 7/18/96 to submit written discovery upon deft due to physical accident of atty (signed by Judge Raymond L. Acosta) (ni) [Entry date 07/19/96]

7/19/96 32 JOINT MOTION by All Plaintiffs, Jose E. Aponte, Mun. of Carolina to Continue discovery (ni) [Entry date 07/23/96]

8/6/96 33 ORDER granting [32-1] joint motion to Continue discovery granting [30-1] motion for Anita Hill of the DOJ to Withdraw as Attorney (Terminated, set Notice of Attorney Appearance Deadline on 8/14/96 for Mun. of Carolina (signed by Judge Raymond L. Acosta) (su)

8/12/96 34 MOTION by Jose E. Aponte, Mun. of Carolina for Lou Ann Delgato to Withdraw as Attorney (su) [Entry date 08/13/96]

8/19/96 35 NOTICE of Attorney Appearance for Jose E. Aponte by Mayra Maldonado-Colon (ni) [Entry date 08/20/96]

8/21/96 36 NOTICE of Attorney Appearance for Jose E. Aponte, Mun. of Carolina by Luis E. Pabon-Roca (ni) [Entry date 08/23/96]

8/28/96 37 LIST OF COUNSEL. granting [34-1] motion for Lou Ann Delgado to Withdraw as Attorney (Terminated attorney Lou Ann Delgado for

Mun. of Carolina, attorney Lou Ann Delgado for Jose E. Aponte [35-1] appear/appearance notice Noted. [36-1] appear/appearance notice Noted. (signed by Judge Raymond L. Acosta) (ni) [Entry date 08/29/96]

8/30/96 38 MOTION by Jose E. Aponte, Mun. of Carolina to Extend Time to conclude discovery (ni) [Entry date 09/03/96]

9/6/96 39 MOTION by All Plaintiffs for Raul Barrera to Withdraw as Attorney The law firm of Hernandez Sanchez will continue to rep. pltfs. (ni) [Entry date 09/17/96]

9/27/96 40 NOTICE of Attorney Appearance for All Plaintiffs by Ramon M. Gonzalez-Santiago (ni) [Entry date 09/30/96]

10/3/96 41 MOTION by Jose E. Aponte, Mun. of Carolina for setting of S/C to discuss discovery problems (ni) [Entry date 10/07/96]

10/9/96 42 Informative Motion by Jose E. Aponte, Mun. of Carolina re: misidentification of parties in dkt #41. (ni) [Entry date 10/15/96]

10/30/96 43 ORDER denying [41-1] motion for setting of S/C to discuss discovery problems [42-1]

motion information Noted as stated herein. (signed by Judge Gilberto Gierbolini for Judge Raymond L. Acosta) (mi) [Entry date 10/31/96]

10/30/96 44 ORDER granting [38-1] motion to Extend Time to conclude discovery, reset Discovery deadline to 11/12/96 etc. as stated herein (signed by Judge Gilberto Gierbolini for Judge Raymond L. Acosta) (mi) [Entry date 11/01/96]

10/30/96 45 ORDER AND LIST OF COUNSEL granting [39-1] motion for Raul Barrera to Withdraw as Attorney (Terminated attorney Raul Barrera-Morales for Tito Fuentes-Fuentes granting [40-1] appear/appearance notice (signed by Judge Gilberto Gierbolini for Judge Raymond L. Acosta) (mi) [Entry date 11/01/96]

10/30/96 44 ORDER granting [38-1] motion to Extend Time to conclude discovery, set Joint Motion Filing revised discovery schedule deadline to 11/12/96 etc. as stated herein (signed by Judge Gilberto Gierbolini for Judge Raymond L. Acosta) (mi) [Entry date 11/04/96]

11/8/96 46 NOTICE of Attorney Appearance All Plaintiffs by Nelson Rivera-Cabrera (mi) [Entry date 11/12/96] [Edit date 11/15/96]

11/12/96 47 JOINT MOTION SUBMITTING revised discovery schedule by Jose E. Aponte, Mun. of Carolina, All Plaintiffs (mi) [Entry date 11/13/96]

11/18/96 48 ORDER [46-1] appear/appearance notice

Noted. granting [47-1] miscellaneous (signed by Judge Jaime Pieras Jr. for Judge Raymond L. Acosta) (mi) [Entry date 11/20/96]

2/13/97 49 ORDER, set Pretrial Conference for 10:00 8/15/97, set Settlement Conference for 10:00 8/5/97, set Joint Pretrial Order deadline to 7/15/97, set Trial Brief, Proposed Jury Instructions, Proposed Voir Dire & Proposed Verdict Form to 8/12/97, and set Jury Trial for 9:30 8/19/97 before Judge Raymond L. Acosta (signed by Judge Raymond L. Acosta) (mi) [Entry date 02/18/97] [Edit date 07/30/97]

5/5/97 50 CERTIFICATE OF SERVICE by Mun. of Carolina that the motion for summary judgment has been served upon pltfs (mr) [Entry date 05/06/97]

5/5/97 51 INFORMATIVE MOTION by Mun. of Carolina to Compel Discovery towards pltfs w/attach. Response due 4/18/97. (ni) [Entry date 05/08/97] [Edit date 06/04/97]

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Proceedings include all events. File Appeal Closed

3:95cv2121 Angulo-Alvarez, et al v. Aponte, et al

6/4/97 52 ORDER granting [51-1] motion to Compel Discovery towards pltfs. Pltfs shall suppl. the int. by 6/20/97, etc. (signed by Judge Raymond L. Acosta) (ni) [Entry date 06/05/97]

6/10/97 53 NOTICE of service upon pltf of mot. to join

and/or adopt defts uncontested material facts, by Jose E. Aponte (ni) [Entry date 06/11/97]

6/10/97 54 MOTION by All Plaintiffs to Extend Time for 20 days to opp. mot. for summ. jdgmt (ni) [Entry date 06/11/97]

6/11/97 55 ORDER [50-1] service certificate Noted. (signed by Judge Raymond L. Acosta) (ni) [Entry date 06/12/97]

6/16/97 56 RESPONSE by Jose E. Aponte, Mun. of Carolina in opposition to [54-1] motion to Extend Time for 20 days to opp. mot for summ. jdmt by All Plaintiffs and req. clarification of Order of 6/9/97 (ni) [Entry date 06/17/97]

6/17/97 57 ORDER granting [54-1] motion to Extend Time for 20 days to opp. mot. for summ. jdmt, Response to Motion (signed by Judge Pieras for Judge Raymond L. Acosta) (ni) [Entry date 06/20/97]

6/19/97 58 Informative Motion by All Plaintiffs that pltfs have supplemented the ans. to interrog. propounded by the Municipality of Carolina as per Order of 6/20/97. (ni) [Entry date 06/23/97]

6/30/97 59 CERTIFICATE OF SERVICE of opp to deft's mot for sum/jgm by All Plaintiffs (su) {Entry date 07/01/97]

6/30/97 60 MOTION by All Plaintiffs to Strike deft's dispositive motion Response due 7/14/97. (su) [Entry date 07/01/97]

6/30/97 61 ORDER denying [56-1] opposition response. In the event that plffs do not comply with terms of this order defts may file their mot for sum/jgm for disposition by the court as unopposed. (signed by Judge Raymond L. Acosta) (su) [Entry date 07/07/97]

7/8/97 62 ORDER [58-1] motion information Noted. (signed by Judge Raymond L. Acosta) (su) [Entry date 07/10/97]

7/11/97 63 NOTICE of Attorney Appearance for Manuel Angulo-Alvarez, Julio Olivero-Ayala, Rafael Marcano-Mundo, Edwin Gonzalez-Curet, Alonso Calderon-Burgos, Gabriel Isaac Clemente, Jesus M. O'Farril, Tomas Alvarez-Rodriguez, Rogelio Viera-Cancel, Luis Encarnacion-Nery, Edwin Delgado-Olivieri, Miguel Lozano-Guadalupe, Neftali Alvarez-Matos, All Plaintiffs, Tito Fuentes-Fuentes by Jesus M. Hernandez Sanchez (su) [Entry date 07/14/97]

7/11/97 64 ORDER [59-1] service certificate Noted. denying [60-1] motion to Strike defts' dispositive motion (signed by Judge Raymond L. Acosta) (su) [Entry date 07/17/97]

7/15/97 65 JOINT MOTION by Jose E. Aponte, Mun. of Carolina, All Plaintiffs to Extend Time until

8/5/97 to submit Proposed PTO (su) [Entry date 07/23/97]

7/18/97 66 Proposed pre-trial order received from parties. (ni) [Entry date 07/22/97] [Edit date 07/23/97]

7/23/97 67 MOTION by Jose E. Aponte, Mun. of Carolina to Extend Time until 8/15/97 to file reply to opp. to summ. jdmt (ni) [Entry date 07/28/97] [Edit date 07/28/97]

7/23/97 68 MOTION by Mun. of Carolina to Continue PTC (ni) [Entry date 07/28/97]

7/24/97 69 ORDER granting [67-1] motion to Extend Time until 8/15/97 to file reply to opp. to summ. jdmt, denying [68-1] motion to Continue PTC, set Pretrial Conference and Stlmt Conf. for 10:00 1/20/98 before Judge Raymond L. Acosta, set Jury Trial for 9:30 2/17/98 before Judge Raymond L. Acosta, set Jury Instructions deadline to 2/10/98, set Brief deadline to 02/10/98, etc. (signed by Judge Raymond L. Acosta) (ni) [Entry date 07/28/97] [Edit date 12/29/97]

7/29/97 70 RESPONSE by All Plaintiffs in opposition to [67-1] motion to Extend Time until 8/15/97 to file reply to opp. to summ. jdmt by Mun. of Carolina, Jose E. Aponte (ni) [Entry date 07/30/97]

7/31/97 71 ORDER [63-1] appear/appearance notice Noted. granting [65-1] joint motion to Extend Time until 8/5/97 to submit Proposed PTO

(signed by Judge Pieras for Judge Raymond L. Acosta) (ni) [Entry date 08/01/97]

8/18/97 72 NOTICE of service of reply to opp. of mot. for summ. jdmt, by Mun. of Carolina (ni) [Entry date 08/19/97]

8/18/97 73 Informative Motion by Mun. of Carolina re: atty's new address. (ni) [Entry date 08/19/97]

8/26/97 80 ORDER [72-1] notice Noted. [73-1] motion information Noted. (signed by Judge Raymond L. Acosta) (ni) [Entry date 08/28/97]

8/27/97 74 NOTICE of filing dispositive motions with response & reply, by Mun. of Carolina. (ni) [Entry date 08/28/97]

8/27/97 75 MOTION with Memorandum in Support by Mun. of Carolina for Summary Judgment w/stmt of material facts that are not in controversy & attach. (ni) [Entry date 08/28/97]

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8/27/97 76 RESPONSE by All Plaintiffs in opposition to [75-1] motion for Summary Judgment by Mun. of Carolina w/attachments. (ni) [Entry date 08/28/97]

8/27/97 77 REPLY by Mun. of Carolina to response to [75-1] motion for Summary Judgment by Mun. of

Carolina (ni) [Entry date 08/28/97]

8/27/97 78 MOTION by Jose E. Aponte to Join and/or adopt defts uncontested material facts (ni) [Entry date 08/28/97]

8/27/97 79 MOTION by Mun. of Carolina to Extend Time for 30 days to submit translations (ni) [Entry date 08/28/97]

9/4/97 81 REPLY by All Plaintiffs to response to [75-1] motion for Summary Judgment by Mun. of Carolina (su) [Entry date 09/08/97]

9/10/97 82 Informative Motion by All Plaintiffs re: that on 9/3/97 Original of SUR-REPLY was erroneusly filed with the Clerk. (su) [Entry date 09/11/97]

9/19/97 83 ORDER granting until 11/30/97 [79-1] motion to Extend Time for 30 days to submit translations; denying as moot [82-1] motion information. The court will consider the sur-reply filed on 9/4/97, dkt #81, w/o the need to resubmit it again. (signed by Judge Raymond L. Acosta) (ni) [Entry date 09/22/97]

10/22/97 84 INFORMATIVE MOTION by Edwin Delgado-Olivieri and request to add Edwin Delgado's name to the caption of the 2nd amended complaint (ni) [Entry date 10/23/97]

10/31/97 85 MOTION by Mun. of Carolina to Extend Time until 11/15/97 to file response to mot. req. leave to amd complaint (ni) [Entry date 11/03/97]

11/17/97 86 RESPONSE by Mun. of Carolina in opposition to [84-1] motion request to add Edwin Delgado's name to the caption of the 2nd amended complaint by Edwin Delgado-Olivieri (su) [Entry date 11/18/97]

11/25/97 87 ORDER denying [84-1] motion request to add Edwin Delgado's nai .e to the caption of the 2nd amended complaint granting [85-1] motion to Extend Time until 11/15/97 to file response to mot. req. leave to amd complaint (signed by Judge Pieras for Judge Raymond L. Acosta) (ni) [Entry date 11/26/97]

12-1/97 88 MOTION SUBMITTING translations of exh. of the motion for summary judgment, w/attachment by Mun. of Carolina (ni) [Entry date 12/02/97]

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12/22/97 89 ORDER granting in part, denying in part [75-1] motion for Summary Judgment, granting [78-1] motion to Join and/or adopt defts uncontested material facts Pretrial/Stlmt Conference remains set for 10:00 1/20/98 and Jury Trial remains set for 9:30 2/17/98 etc. as stated herein. (signed by Judge Raymond L. Acosta) (ni) [Entry date 12/29/97]

12/22/97 90 PARTIAL JUDGMENT dismissing various claims asserted against Mun. of Carolina and Jose E. Aponte in his official capacity and dismissing the complaint against Jose E. Aponte

in his individual capacity. (signed by Judge Raymond L. Acosta) (ni) [Entry date 12/29/97]

1/9/98 91 NOTICE OF APPEAL [90-1] judgment order by All Plaintiffs. FILING FEE $105. RECEIPT #90555 Transcript Order Form furnished to appellant Appeal record due on 1/20/98 (ni) [Entry date 01/13/98]

1/20/98 -- Settlement Conference held before Judge Raymond L. Acosta (np) [Entry date 01/26/98]

1/20/98 -- Pretrial Conference held before Judge Raymond L. Acosta (np) [Entry date 01/26/98]

1/21/98 92 MINUTES OF PRETRIAL/SETTLEMENT CONF. hld on 1/20/98: set Motion Filing deadline to 1/29/98 for each plff shall provide under oath/verification answers to the questions as stated herein. Plffs shall personally serve their responses to deft's cnsl. The Court denied plff's req to take the Mayor's deposition. Plff were gtd 5 days to move for certification of the partial judgment. The Court gtd deft's mot for bifurcation of trial. Only the liability aspect of the litigation will be tried on 2/17/98. The Municipality was gtd until 2/9/98 to move for reconsideration of the remaining issue. The Court denied deft's req for cont of trial. (Judge Raymond L. Acosta) (np) [Entry date 01/26/98]

1/26/98 93 MOTION by All Plaintiffs for Reconsideration of [92-1] order denying request to depose deft Jose Aponte to request order for leave to serve written interrog., and/or to Continue trial (ni)

[Entry date 01/27/98]

1/26/98 94 MOTION by All Plaintiffs to request order for certification of partial judgment (ni) [Entry date 01/27/98]

2/2/98 95 MOTION by Mun. of Carolina to Dismiss for failure to comply with order Response due 2/17/98. (su) [Entry date 02/04/98]

2/3/98 96 Informative Motion by Mun. of Carolina re: deposition of Luis F. Gonzalez. (su) [Entry date 02/04/98]

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2/5/98 97 ORDER granting [95-1] motion to Dismiss for failure to comply with order denying [93-1] motion for Reconsideration of [92-1] order denying request to depose deft Jose Aponte, denying [93-2] motion to request order for leave to serve written interrog., denying [93-3] motion to Continue trial denying [94-1] motion to request order for certification of partial judgment (signed by Judge Raymond L. Acosta) (su) [Entry date 02/06/98]

2/5/98 98 FINAL JUDGMENT dismissing complaint (signed by Judge Raymond L. Acosta) (su) [Entry date 02/06/98]

2/5/98 -- Case closed (su) [Entry date 02/06/98]

2/10/98 -- Certified and transmitted Record on Appeal to U.S. Court of Appeals: [91-1] appeal by All Plaintiffs (su) [Entry date 02/11/98]

2/12/98 99 MOTION by All Plaintiffs for Reconsideration and relief of [98-1] judgment order, and to Continue proceedings if relief from jdmt is grtd on or before 2/18/98 w/sworn stmts attached. Response due 2/25/98. (ni) [Entry date 02/24/98]

3/2/98 100 RESPONSE by Mun. of Carolina in opposition to [99-1] motion for Reconsideration and relief of [98-1] judgment order by All Plaintiffs (ni) [Entry date 03/03/98]

3/25/98 101 ORDER denying [99-1] motion for Reconsideration and relief of [98-1] judgment order, denying [99-2] motion to Continue proceedings if relief from jdmt is grtd on or before 2/18/98 (signed by Judge Raymond L. Acosta) (ni) [Entry date 03/26/98]

3/27/98 102 JUDGMENT OF USCA (certified copy), issued as informal mandate, Re: [91-1] appeal by All Plaintiffs dismissing the appeal. (np) [Entry date 03/30/98]

3/27/98 -- Record on Appeal returned from U.S. Court of Appeals:{0-0] recommendations appeal, [91-1] appeal (np) [Entry date 03/30/98]

4/20/98 103 NOTICE OF APPEAL [101-1] order, [90-1] judgment order, [98-1] judgment order, [97-1] order by All Plaintiffs. FILING FEE #105.00

RECEIPT#92604 Transcript Order Form furnished to appellant Appeal record due on 4/30/98 (ov) [Entry date 04/21/98]

4/21/98 104 AMENDED NOTICE OF APPEAL [101-1] order, [98-1] judgment order, [97-1] order, [90-1] judgment order by All Plaintiffs. Transcript Order Form furnished to appellant Appeal record due on 5/1/98 (il) [Entry date 04/22/98]

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5/15/98 -- Certified and transmitted Record on Appeal to U. S. Court of Appeals: [104-1] appeal by All Plaintiffs, [103-1] appeal by All Plaintiffs (Notice of Appeal, certified copy of dkt sheet and dkt entries #90,97,98,101,103 & 104). (su) [Entry date 05/19/98]

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Supreme Court, U.S.
FILED
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(2)

No. 98-1948

In The

Supreme Court of the United States

MANUEL ANGULO ALVAREZ, ET AL.,

Petitioners,

v.

JOSE E. APONTE DE LA TORRE, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To United States Court Of Appeals For The First Circuit

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BRIEF IN OPPOSITION

TO THE HONORABLE COURT:

RESPONDENTS, Municipality of Carolina and its Mayor José E. Aponte de la Torre in his official capacity, very respectfully oppose the petition to review the judgment of the United States Court of Appeals for the First Circuit in this case for the following reasons:

INTRODUCTION

Pursuant to Supreme Court Rule 24(2) for purposes of this Opposition to the Petition for Writ of Certiorari respondents adopt the petitioners' formal requisites for briefs included in Rule 24(1)(a)(b)(d)(e), and (f). We proceed to discuss the deficiencies of petitioners' statement of the case.

ARGUMENT

Respondents do not substantially disagree with petitioners with regards to the statement of facts propounded by the latter, however, respondents wish to clarify some of them, that as construed may mislead this Honorable Court. Other facts which are important in the events that led to the dismissal of the complaint were altogether left out of petitioners' narrative and, once again, it is important that this Honorable Court considers the totality of the facts surrounding this case.

The first thing that petitioners allege to this Honorable Court as a violation of due process is that respondents were allowed to file their Motion for Summary Judgment three days after the deadline previously set by the District Court. Although a numerical analysis will show that there was a three-day delay in filing the Motion, a calendar analysis will reflect that in reality it did not even amount to a day. The last day for filing fell on a Friday and there was simply not enough time to file it before closing time. It was filed the next working day, Monday, March 5, 1998. Respondents did not file an informative motion because at that time it was felt it would be of no consequence what in reality was a few hours delay in the filing of the motion. As a matter of fact, both the District Court and the Court of Appeals dismissed this argument because it was waived by the petitioners themselves by not timely raising it. Furthermore, the alleged three-day delay in filing the motion did not cause the petitioners any prejudice. A trial date had not been set at the time respondent's motion was filed. After the filing, petitioners requested and were granted an extension of time to oppose the motion, which they finally filed around two months later. In conclusion, there was no damage to petitioner's due process protections and the District Court did not abuse its discretion in allowing the filing of the motion.

The second point that needs clarification regards petitioners' request to depose Mayor Aponte. This request was denied by the District Court because the petition for this discovery was made for the very first time at the Pre-Trial Conference. In reality it was a reaction to respondents request to obtain in discovery the

basis for their prima facie case that prompted the request for this deposition. Petitioners' request is clearly distinguishable from respondents' request for the answer to four interrogatories. Petitioner had shown a stubborn attitude by not providing timely and meaningful discovery during the discovery phase of the litigation. This point will be discussed further in another section; suffice it for now to say that the Honorable District Court did not abuse its discretion by denying this belated request.

A third point that needs clarification is petitioners' claim that the District Court abused its discretion by granting respondents' Motion to Dismiss without allowing petitioners the ten days allotted by the rules to file responses. Although it may seem that the District Court acted too quickly and without the benefit of petitioners' response, the truth of the matter is that there was nothing to respond to because this was not a "typical" motion to dismiss under Federal Rule Of Civil Procedure 12. (Although petitioners try to argue that the ruling was under FRCP 12(b)(6), it clearly was not).

In reality it was a request by respondents for the Honorable Court to impose sanctions for failure to comply with a court order. This is why we respectfully submit that there was nothing to respond to, either the court's order to each petitioner to answer four questions had been complied with or not. It should be clear from the record that petitioners blatantly disregarded the court order and as a matter of fact, not even after dismissal (via reconsideration) did petitioners responsively answer the four questions posed by the court. (We very respectfully submit that petitioners never attempted to seriously address these questions, even after knowing that the

previously announced consequence, dismissal, was already a reality).

Before going into the answers provided by Angulo, the only petitioner who attempted to comply with the court order, it is important to note that petitioners were fully forewarned by the Honorable Court of the consequences of non-compliance. This fact is recognized in petitioners' own brief where in the sixth footnote they admit that "in the pretrial conference held on January 20, 1998, the District Court warned the plaintiffs-petitioners, that failure to comply with the response to such interrogatories, will result in the dismissal of the claims and/or sanctions against counsel personally." This candid admission by petitioners, which of course comes right out of the minutes of the Pre-Trial Conference, should cap any argument that the court abused its discretion by dismissing what clearly was a frivolous claim. The same minutes will reflect that during the Pre-Trial Conference petitioners were not able to identify a single position for which they claimed they qualified and that such position was given to another person due to his/her political affiliation. This is precisely why the court's order was so strongly worded. On the eve of trial, petitioners had not propounded enough evidence to have a prima facie case for the jury to consider. The four answers go to this basic evidence needed in this type of case:

1. Each position you claim was available at the Municipality at the time of your lay-off or subsequently became available but was not offered to you.

2. Specify the qualifications required for the position(s) listed in response to question no.

1. Indicate if you met those qualifications and if not specify why not.

3. For each position identified in response to question no.1 state the name of the person appointed to fill the position and his/her political affiliation.

4. List the evidence you have available to establish that political affiliation was a motive for filing the position.

Although petitioners seem to claim that these were oppressive questions, in reality they are the ABC's of a discrimination case of any nature, not only a political one. A brief perusal to the only response timely filed by petitioner Angulo will reveal that the District Court did not abuse its discretion in dismissing the remaining claims. The Court explained that there was no justification for petitioner to lack the crucial evidence that the Court had requested. The court pointed out, in particular, the failure to proffer any evidence to establish discrimination. Not only were Angulo's answers deficient and unresponsive, there was absolute silence with regards to question number four, the most important one of the group. If this Honorable Court were to examine the original documents it will observe that when the other petitioners filed their answer belatedly through a motion for reconsideration, it was an exact copy of the one previously filed by Angulo except that a fourth answer was "typed in" and only stated that the evidence of discrimination would be their own testimony. They never offered what the factual basis for this alleged testimony would be, nor anything else that would sustain their discrimination allegations.

This is the crux of the matter. This is why the non-compliance with the court order left no choice to the District Court but to conclude that there was no reason to proceed to trial when petitioners had demonstrated that even after ample opportunities they lacked the necessary proof to meet the burden of producing sufficient evidence from which the trier of fact could reasonably infer that political affiliation was a substantial or motivating factor behind the contested personnel actions. It was not an abuse of discretion to dismiss the complaint of petitioners that plainly refused to comply with discovery orders that went to the most basic concepts of a discrimination claim.

Petitioners simply never cleared the initial threshold of producing sufficient evidence from which a rational jury can find that political affiliation was a substantial or motivating factor as established in the case law, such as *Rutan v. Republican Party of Illinois*, 497 U.S. 752 (1980) and its progeny, or *Mt. Healthy City School Dist. Board of Ed. v. Doyle*, 429 U.S. 274 (1977), and its progeny.

Angulo's answers not only were insufficient and unresponsive but they were speculative and based on inadmissible hearsay. Furthermore, if we were to accept petitioners' argument with regards to the privatization and relocation of the employees at face value, we would have to conclude that there was no discrimination. As the Honorable Court of Appeals for the First Circuit expressed in its Opinion:

> "Indeed, although the plaintiffs alleged that a majority of the employees at the Department were NPP followers, defendants correctly note that the plaintiffs' own statements belie the accuracy of this statement. The plaintiffs claim –

> and defendants do not dispute – that there were a total of seventy employees in the Department. In the Plaintiffs' motion for reconsideration of the dismissal of their complaint, they listed 29 PDP followers who were relocated to other jobs. Combined with the other six names set forth in additional documentation, at least half of the employees in the Department must have been PDP followers. At the very most, the Plaintiffs can claim that the Department was evenly split between PDP and NPP followers. On this evidence, no rational jury could conclude that the decision to privatize the department was politically motivated. Given that the Plaintiffs failed to meet their initial burden of presenting a prima facie case of discrimination, the court properly entered summary judgment on the privatization claim."

This final, and fatal, disregard of the District Court orders cannot be seen in a void but in the context of the total litigation. Although petitioners downplay these events as not important, they help establish the context of the final decision. The record will reflect that respondents' initial interrogatories, served on February 29, 1996, where deficiently answered by the petitioners on August, 1996. After innumerable meetings among counsel pursuant to District Court local rule 311.11, which requires counsel to meet before bringing discovery discrepancies to the Honorable Court, respondents had to send a thirty-four (34) page letter specifying the deficiencies in the answers on April 18, 1997. This produced no response and respondents had to seek an order from the court on May 5, 1997, which was granted in no uncertain terms.

On June 3, 1997 the court ordered petitioners to supplement the interrogatories served on them with complete and accurate answers. The court noted that the discovery subject of the order had been served one year before and had obtained totally inadequate answers. Further the Court clarified that "the information sought . . . should be readily available to petitioners . . . because they have the burden of proof in this action . . . ". Since June 1997, the Court warned for the first time that "failure to comply with the terms of this Order shall result in the imposition of sanctions including but not limited to the dismissal of the complaint".

The lack of responsive answers, even after such a strong language forced the issue at the Pre-Trial conference that is being brought to this Honorable Supreme Court. This is why in the just perspective, the Honorable Court did not abuse its discretion when dismissing a complaint for lack of answers that are so basic to a discrimination complaint that should have been provided in the first round of discovery on or around March 1996.

CONCLUSION

As can be clearly determined after all the facts are taken into account, the District Court for the District of Puerto Rico did not err, nor abuse its discretion by dismissing the complaint, nor did the Court of Appeals for the First Circuit err in affirming the judgment, therefore the PETITION FOR CERTIORARI should be denied by this Honorable Supreme Court.

Respectfully submitted,

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